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WAKE FOREST ON WALL STREET

Inside: Profiles of Wake Forest Alumni in the Corporate World

STATEMENT OF PURPOSE AND POLICY

The **Wake Forest Jurist** is published twice yearly by the Wake Forest School of Law of Wake Forest University. Its main purpose is to inform the friends and alumni of the Law School about activities and events of interest at the Law School, of recent important decisions by the courts of North Carolina and other jurisdictions, and news of the achievements and activities of fellow alumni. In this way the **Jurist** seeks to provide a service and a meaningful link between the School of Law and its alumni. Also, the magazine shall provide a forum for the creative talents of students, faculty and its alumni and an opportunity for legal writing by them. Opinions expressed and positions advocated herein are those of the authors and do not represent official policy of the School of Law.

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The **JURIST** *invites all interested students to participate in the Spring Issue (office located in Room 8).*

COVER PHOTO *Wake Forest Law Alumnus, John Pirog, (75) who practices in Manhattan, being interviewed by* **JURIST** *News Editor Robert Ruegger (photos by Steve Dellinger).*

Pick up your pen
and send us your news.

Let us hear from you! Please take time to fill out the enclosed Alumni news form and mail it today.

The Dean's Column

In his *President's Report* for this year, Dr. Thomas K. Hearn noted that the School of Law and Babcock Graduate School of Management "are studying the academic and programmatic outcomes of a shared facility, and we are excited about the prospect of this cooperation. The future of our professional programs is bright."

President Hearn was referring to the work of the Joint Development Advisory Committee which has been exploring ways in which the two disciplines of law and management can pursue a symbiotic relationship within a new Professional Center Building. In reviewing the work of the committee President Hearn reported last year, "We hope to create programs in which students will better understand the respective roles of business and the law in the orderly conduct of the nation's enterprise. . . As we move forward in this planning effort, the intellectual element grows in importance in our vision of the future of [each] school."

Last year a subcommittee of faculty from both schools began exploring possible areas of academic and intellectual cooperation and collaboration. Although the committee's work continues, two ideas have emerged from its study. First, opportunities for cooperation and collaboration already exist in the areas of law office management, labor-management relations, international business transactions, corporate finance, ethics, and dispute resolution which can provide meaningful prospects for enriched curriculum, joint research, and scholarship. Second, further opportunities should evolve within a creative and supportive environment as the two faculties study the working relationships between the two professions of business and law.

Kenneth A. Zick, II

One of the distinct advantages of a small comprehensive University is the opportunity to explore cooperative programs in a way that strengthens the entire University. A university is after all a place where the pursuit of knowledge, truth, and justice can bridge disciplines.

With the generous gift of RJR-Nabisco World Headquarters both schools now have the luxury of contemplating how each might strengthen and enrich their programs through cooperation. Such thinking does not diminish in any way the strengths of each program. For example the law school has been and will continue to be a school that excels in teaching procedure and advocacy. In any joint building, each school will retain clearly separate identities and separate space for separate programs. Indeed, in configuring space within a joint center, the separate areas may indeed be further apart from each other than the present distance between the Babcock School and Carswell Hall. To be sure some important economies can be achieved within a new building in such areas as placement interviewing rooms, registration areas, student lounges, an auditorium, financial aid offices and some administrative space. But even greater benefits can grow out of interdisciplinary cooperation in thought and academic discourse between the professions.

The concept of a professional center is not an educational hybrid. No lawyer or business executive would desire or approve of this idea, but a joint venture can become a useful meeting point for convergence between the professions to explore common themes and concerns where appropriate and academically sound. This concept is not without its peers among institutions of great standing who have established centers for the study of "Law, Economics, and Public Policy" (Yale), "Negotiation" (Harvard), "Socio-Legal Studies" (Oxford), "Law & Economics" (Pennsylvania), "International Studies" (N.Y.U.), "Law and Technology" (Houston), and "Criminal

Justice" (Chicago).

These centers are useful convergence points for learning and discourse that can advance learning among disciplines. They exist because great universities realize that the inquiry and study of institutions in our society does not proceed in an intellectually limited sphere. Law is both a mover and a reflector of social and scientific change. The law draws meaning and understanding from other disciplines as it seeks to order and regulate change in society.

The evidence of convergence between law and management has become abundant in an economically interdependent society.

The point of convergence is illustrated most dramatically in sensational litigation surrounding battles over technology. In the 1970's the Control Data suit against IBM for monopolistic and anti-competitive practices proceeded for four years until settlement, with significant and immense expenditures of management time and legal expense.

Recently, in *Kemmer* v. *Monsanto* a marathon trial proceeded for three and a half years. The case arose out of the casual connection between the spillage of a teaspoon of dioxin in the hamlet of Sturgeon, Missouri and the plethora of ailments of which many of the town's residents have since complained. The trial involved 182 witnesses, 6,000 separate exhibits, and a transcript of over 100,000 pages. Professor H. Richard Uniller of Columbia University Law School said in an interview that "Jonathan Swift must have dreamed this one up. It must be a test of our legal system somehow." The *New York Times* reported that *Kemmer* may be the modern day version of Dickens' fictitious never-ending Jarndyce v. Jarndyce.

The litigation surrounding Texaco's outbidding of smaller rival Pennzoil for control of Getty Oil presents another example of frenzied legal maneuvering to avoid bankruptcy from an astounding $10.5 billion judgment.

Perhaps, it is the specter of cases like these that has moved judges, lawyers, and the business community to consider alternatives to long and costly litigation which serves neither the parties nor the public interest well. Recently, the *Wall Street Journal* announced that International Business Machines Corp. and Fujitsu Ltd. have broken new ground in settling complex corporate conflicts through binding arbitration. The *Wall Street Journal* reported on September 18 that "after four years of wrangling, the two companies' expensive legal machinery — the dozens of lawyers, the corporate staffs, the mountains of competing legal briefs hadn't settled a dispute over whether Fujitsu had stolen the software, the operating instructions, inside IBM's mainframe computers." The deadlock was broken by resort to arbitration. The arbitrators were a law professor and a retired computer executive. As a San Francisco attorney noted, "the decision is based on the premise that the parties and the public can't afford to wait until the copyright law gets straightened out. So, what they said is, 'We don't care about the copyright law — we're going to decide this based on public interest and public policy.' It's the first time I've seen those consumer interests used as the basis for resolution of a dispute." Already the case is being pored over by companies gripped in other legal stalemates.

One thing that emerges from a review of these decisions is that lawyers and businessmen are being called upon to rethink how the legal system is equipped to handle the conduct of the nation's business as it competes in an increasingly competitive global economy.

Three years ago the law school began building a curriculum which focused on examining the legal concerns of business with the adoption of its 440 Plan. The Plan aimed at "designing and implementing an integrated business-oriented specialty area in the curriculum." Since then courses have been added to the curriculum in business drafting, dispute resolution, banking law, international business transactions, and computer law. Moreover, the Law Review has instituted an annual symposium and separate issue on corporate law issues. Last year's symposium focused on the rights of minority shareholders. This year's symposium in March will focus on take-overs and mergers. We continue to search for a distinguished scholar in the corporate law area to fill our first University Chair in Law.

The exploration of issues resulting from the convergence of business and law also face North Carolina and Winston-Salem, as well as the nation. Anyone familiar with the rapid growth of business and commerce in Charlotte and the development of technology in the Research Triangle cannot overlook the future expansion of business and commercial law practice in North Carolina.

By planning to explore the intersection points between business and law we can serve the public interest in ways yet to be discovered. Patrick Gnazzo, a lawyer, recently appointed President of United Technologies, International Corporation, expressed this vision well at our Partners' Banquet when he noted that lawyers have much to lend to the management of our nation's business. As a litigator, he said, "I learned most about management as a lawyer dealing with its problems."

The pursuit of interdisciplinary study and research should not be viewed as the academic thrust of either the business school or law school. Each seeks to educate managers for management and lawyers for law, but the concept of cooperation as a shared expression of convergence between the professions should be allowed to evolve as a movement to enrich the life of our students, our community, and the nation. Wake Forest is ideally situated to lead this movement.

Wake Forest Alumni in Business and Corporate Law

Editors Note: Law School News and Features Editor, Robert Ruegger and Photography Editor, Steve Dellinger travelled to New York September 18-19 to compile this series of interviews and pictures.

John Pirog

John Pirog, WFU School of Law '75, is associated with the century-old firm of Wood, Dawson, Smith, & Hellman. The firm recently moved from its old quarters on Wall Street to 17 Battery Park, at the southern tip of Manhattan. Everything about the building and office is unmistakably New York: from the view from Pirog's office, where one can see the Statue of Liberty, the Downtown Athletic Club, and the World Trade Center; from the street noise still audible 28 floors up; and from the corporate nature of the work done by the firm.

"New York is so highly specialized. A lawyer does one particular thing," Pirog stated. "You tend to specialize very quickly." Pirog's specialty is municipal bonds. He represents governmental issuers as bond counsel or underwriters of bonds in a municipal transaction as underwriters counsel.

As bond counsel, Pirog helps municipal authorities to issue bonds. To start the process, Pirog stated that he must "initially review state statutes to determine whether the city was authorized by statute to finance such a project and finance it with bonds. After resolving the statutory problems we would begin to assist the issuer in developing the documentation necessary to issue the bonds."

Whether or not a city has previously issued bonds will determine the transaction. "If an issuer has already issued bonds pursuant to a master indenture or resolution, the issuance of a second or third series (of bonds) is usually less complex...(otherwise) a basic bond resolution or indenture will have to be negotiated and drafted. This is the basic document which provides the terms for the issuance of bonds and the pledge and security for payment of bonds."

Underwriters counsel are another necessity in a municipal bonds deal. Pirog co-authored an article on the subject, appropriately titled "The Role of Counsel to the Underwriters."

"Certain documents prepared in connection with the marketing of bonds are prepared by underwriters counsel and reviewed by bond counsel," remarked Pirog. Among these documents are the official statement and a contract for the purchase of securities.

The official statement sets forth "full disclosure about a transaction and issuer." The disclosure requirement is mandated by the Securities and Exchange Act of 1934; municipal corporations and underwriters are subject to the antifraud provisions of the act. The official statement usually contains information regarding the city's operating history and a compendium of relevant financing documents, as well as such criteria as city tax data, debt administration, employee relations, and pending litigation.

The purchase contract serves as "the agreement between the issuer and the underwriters for the purchase of the bonds," remarked Pirog. "It will contain various representations by the issuer and conditions for sale. After the bonds have been sold there will be a closing at which volumes of paper—opinions, closing documents, basic documents—are produced."

The volume of paperwork in a municipal bonds transaction boggles the mind. What appear to be large textbooks on Pirog's shelves are actually individual transactions. "The particular documentation varies from deal to deal but most revenue bond deals involve extensive documentation," noted Pirog.

While most deals can take many months to complete, Pirog observed that one ingredient in hastening transactions has been the "information revolution." Where large, bulky documents once had to be mailed, they can now be sent from one office to another across the country in minutes thanks to unique telephone mailing connections.

New York and Winston-Salem seem worlds apart. The success of Pirog's career, however, is evidence that Wake Forest graduates are equipped to work in the field of their choice and prosper, even in Gotham.

Rick Goard

What's it like to work in the world's tallest building? Rick Goard (BA '70, JD '73) ought to know. He works for the law firm of Brown & Wood, located on the 53rd, 57th, and 58th floors of One World Trade Center.

Brown & Wood moved to the "Twin Towers" in the early 1980s. Goard admitted that the firm was originally apprehensive about its new location. "This was considered to be the wrong end of Wall Street. But, lo and behold, we turned out to be innovators. A lot of people have moved to this end of town now."

Brown & Wood is a large firm, employing approximately 240 attorneys. A planned office expansion will allow the firm to house upwards of 400 lawyers in the World Trade Center location.

Goard also specializes in the field of municipal bonds. As bond counsel, he represents clients primarily in Florida. As underwriters counsel, he works with diverse interests across the country. All this means one thing: travel. "I probably average two days a week on the road," said Goard. "I don't mind the travelling too much though. If I'm in the office too long I start to get cabin fever."

"In the municipal bond business the lawyer goes to the client. Most business meetings occur at the client's place of business. The reason is that you're dealing with cities and counties. It's politically difficult for a municipal official to come to New York because the local press would not understand the need for municipal officials to make frequent visits to New York."

John Pirog in his Manhattan office. (photo by Dellinger)

Goard's interest in municipal bonds stems from his early days as an assistant county attorney in Forsyth County. His work then entailed contact with New York bond and underwriters counsel who would come to the area in connection with local projects. On one occasion he informed a Brown & Wood partner that he was leaving his job and would no longer be working on county projects. The partner invited Goard to consider a position at Brown & Wood. Goard interviewed with various partners and was offered a position with the firm, which Goard accepted. He recently celebrated his 10th anniversary of working for Brown & Wood.

The law firm of Brown & Wood, for whom Rick Goard ('73) practices is located on the 53rd, 57th, and 58th floors of One World Trade Center. (photo by Dellinger)

Goard always has a number of different transactions in various stages. "The ability to schedule work and keep all clients happy is the hardest thing to do," he said. "The problem is that every client thinks that his deal is the most important in the world. And it is. Balancing your priorities is the important thing."

Municipal bonds is one area of the law which most students do not learn in great detail. "This business is taught mainly by someone passing down skills and knowledge to the next generation," stated Goard. "We have an enormous body of expertise here. There's only one way to do (a deal), and that's to do it with a person who has experience."

What's it like to work in the tallest building in the world? In Goard's case it is rather apropos: not only does he have an office in the clouds, but he has an interesting and rewarding career with an outstanding firm in a very exciting city.

Bert Schaeffer

"Financial planning is a very broad field which has become very popular in the last five years." Bert Schaeffer (JD '75) ought to know: he owns Radnor Financial Consulting Group, Inc., a professional financial planning group based in Philadelphia.

Radnor is a diverse group, employing a number of professionals, from attorneys to MBAs to insurance underwriters. "Our staff is diverse because no one individual can be a specialist in every area," explained Schaeffer.

"I certainly do not feel I could do what I'm doing had I not gone to law school," Schaeffer admitted. "It helps knowing what the general legal implications of certain transactions are."

In addition to his law degree from Wake Forest, Schaeffer has earned an LLM in tax from Temple University. He also practiced law for a number of years before moving into his present position. "I saw this opportunity in financial planning to really do something I like," he said.

"We handle clients not unlike a law firm handles clients. We look at each person individually and establish goals and incentives. All clients fill out a questionnaire listing assets and liabilities. From there we establish the goals and objectives of the client."

"We could have two different clients — the same age, the same job, the same number of children. But they are different. We must get into their psyche and see what kind of risk they seek."

Schaeffer's group specializes in high worth individuals, representing numerous chairmen-of-the-board of major businesses as well as some 20 large corporations. These clients come from all over the country and include some American expatriates working overseas.

In October 1986, Schaeffer and another investor acquired the right to trade under the name Hay Financial Group. Hay has been sponsored by Paine Webber to do financial planning for their clients. "They (Paine Webber) recognize us as an outside objective firm," stated Schaeffer. "It's an important client relationship."

The September 1987 issue of *Money* contained a survey of eight independent financial planners who reviewed computerized financial plans costing $500 or less. Of the eight plans reviewed, the Master Plan offered by Hay for Paine Webber was judged best.

"That's not really our market," said Schaeffer of the Hay plan, "but Paine Webber needed to compete with the other brokerage firms for clients interested in about that amount."

Said *Money:* "The supplement is put together by a human planner at Paine Webber's financial planning subsidiary (sic), Hay Financial Group of Philadelphia and, said the panel, is the only reason to buy the program."

"In hindsight, if I had to do it over again, I would have taken a more finance-regimented curriculum as an undergraduate," concluded Schaeffer, "but while law school did not prepare me for everything, I certainly do not feel I could do what I'm doing without it."

By Robert Ruegger, a second-year student from Raleigh.

Carroll H. Leggett

The road to Washington politics usually includes law school. So does the road to public relations according to Carroll H. Leggett, vice-president of the Hannaford Company, Inc. in Washington, DC and a Wake Forest law alumnus.

"Law school is great preparation for a non-law career," declared Leggett. The most important skill learned in law school is the strategic analysis of problems. "I look at problems a bit differently than others (non-lawyers). Law school teaches you to move systematically and pick out elements necessary to your analysis," stated Mr. Leggett. Through this analysis he learned to sift out extraneous materials and get to the heart of the issue in a constant "mental process."

What kind of background makes a good public relations spokesman? For Leggett, it included a BA in English before his JD. The grammar skills provided by an English degree allow him to look at a passage and say, "It's wrong." Said Leggett, "I wouldn't substitute anything for my English background. Every day it helped me in law school and it still does."

A career in public affairs/public relations involves being a "wordsmith," according to Leggett. Much of his job is preparing materials to send to Capitol Hill and to his clients. The key, said Leggett, is to boil down issues into a form people can read. This involves the "step-by-step" analysis he learned in law school. "Public affairs uses exactly the same communication skills as law. You must be systematic, which is something that is hard to teach to non-lawyers."

Leggett must be doing something right. His long-term clients include the nations of Taiwan and Saudi Arabia. Possible areas of concern for these clients include trade issues, possible arms sales and any other ongoing projects. His office is peppered with various icons of his Eastern and Middle Eastern connections.

Leggett started his career as a Deputy Attorney General in North Carolina under Robert Morgan. Leggett was responsible for administering the "legal side of the office." This continued for six years, until Morgan resigned and won a seat in the Senate. Leggett followed Morgan to Washington and served as his administrative assistant. This too lasted for six years, until Morgan was defeated in his bid for re-election.

The prospects for employment, though, were not slim. With his warm personality and political background, Leggett was quickly snatched up by Peter Hannaford in 1981. Hannaford knew of Leggett's dealings with Taiwan and his excellent skills and quickly hired him to be a part of his newly emerging public affairs/public relations company.

The Hannaford Company receives clients from all different sources, including personal contacts and word of mouth. "Occasionally, the client seeks you out," stated Leggett, which is precisely what Saudi Arabia did. Often clients solicit proposals from different firms and choose the best. "It's the same thing as a law office," declared Leggett.

Leggett appears content with going wherever circumstance has taken him, and he obviously enjoys what he is doing. His advice to people considering "alternative" law careers? "There is no place in the outside world better than D.C. for non-law careers."

By Christine Ryan a second-year student from New York, who interviewed Mr. Leggett in Washington, DC.

Law Board of Visitors: Working Behind the Scenes

The implementation of a business law oriented curriculum at Wake Forest Law School tangibly represents the school's zealous efforts to enhance the marketability of a Wake Forest law degree in the corporate legal community. Less apparent, however, are the personal endeavors of members of the Law Board of Visitors and the Law Alumni Council in building a mutually beneficial relationship between Wake Forest Law and the corporate legal sector.

Law Board of Visitors and Law Alumni Council members have personally contributed to the success of Wake Forest Law's recent business oriented programs in courting the corporate legal community.

First, members of both organizations have themselves made significant financial contributions to the law school and its special development funds. Furthermore, members of both organizations have individually encouraged their associates in both the legal and corporate communities to make similar contributions. Such contributions have provided much of the monetary assistance the law school required to implement the expansion of its business programs. In turn, these expanded programs and the students which they have produced have invoked positive response from practicing area corporate attorneys.

Second, Board of Visitors and Alumni Council members have and continue to offer guidance regarding the formulation and implementation of the Law School's long term development plans. Such planning is implicitly calculated to improve the quality of legal education at Wake Forest, thereby enhancing the stature of Wake Forest law graduates competing for top employment positions. Most recently, the joint-planning efforts of the Board of Visitors and the Law Alumni Council have been focused upon the possibility of the physical joiner of Wake Forest's law and business schools into a single professional complex.

Finally, a third contribution of members of the Board of Visitors and the Law Alumni Council, as capsulized by member Murray C. Greason, Jr. ('59 BA; '62 JD), consists of "spreading the word". Beyond soliciting financial contributions, "spreading the word" involves calling the attention of those members associated in the legal community, corporate and otherwise, to the patented benefits such associates might derive from the quality of legal education at Wake Forest. The evangelical efforts of these members has been particularly effective in generating support for the law school's recently expanded business law programs. Such effectiveness has been readily apparent in the placement of student participants in the Clinical Program with General Counsel for Wachovia Bank and Reynolds Tobacco.

Thus, the personal efforts of members of the Law Board of Visitors and the Law Alumni Council have been instrumental in laying the cornerstone for a symbiotic relationship between Wake Forest Law School and the corporate legal community. It is now the responsibility of current Wake Forest law students to build upon this foundation bestowed upon them.

By Steve Jeffries, a second-year student from Bethesda, Maryland.

Law Board of Visitors present a permanent commemorative plaque to the Law School on behalf of National Moot Court winners Scott Lovejoy, Donna Sisson, Karen Williams, and advisor Professor Rose. (photo by Gunter)

The Law Board of Visitors is comprised of both Wake Forest alumni and regional attorneys and judges. Board of Visitor members are elected to serve three year terms by the Board of Trustees. Dean Scarlett and currently serving Board members provide the nominee pool for these elections. The Law Board of Visitors convenes biannually, most recently in conjunction with the more familiar Law Alumni Council on September 18 and 19, 1987.

Dean Zick's Political Asylum Case

Associate Dean Kenneth Zick recently had a rewarding experience by representing a young woman from Eastern Europe in her appeal for political asylum in the United States. Victoria (not her real name) had been persecuted by the authorities in her native country for her political activities and had fled to the United States. William Ward, then a third-year student at Wake Forest, told Zick of her plight in August of 1986, and though he knew

little about that area of the law, after looking into the matter, he agreed to take the case on.

Zick filed a request for political asylum with the Immigration and Naturalization Service in September of 1986. Over the course of the next few months, with the aid of North Carolina Senators Jesse Helms and Terry Sanford, who sent letters of recommendation to the INS and State Department, the matter came under the consideration of State Department officials.

With Victoria's visa about to expire, a letter arrived on March 6, 1987 stating that the INS intended to reject the request for political asylum. Fortunately, a Supreme Court case involving political asylum that had been pending was decided three days later. *INS v. Cardoza-Fonseca* established that a "well-founded fear" of persecution in one's homeland was the standard for granting political asylum under § 208(a) of the Immigration and Nationality Act rather than a "clear probability" standard as set out in § 243(h) of the same act.

Armed with this decision and its more subjective standard of proof, Zick filed a motion to reconsider with the INS, which they granted. He then worked hurriedly to complete a brief on the motion to meet the 15 day deadline set by the INS. The letter which came from the INS this time bore the good news that Victoria's petition for asylum would be granted.

Zick pointed out the difficulties in proof inherent in a case like this one. "We didn't have much independently-derived evidence of persecution...no newspaper accounts, or police records," said Zick, who added that the government in Victoria's country did not allow such information to be published. For this reason, he believed that the more flexible approach to evidence as advocated in the *Cardoza-Fonseca* case is the fairer standard in determining worthiness of political asylum. "An interesting facet of the case was:how do you effectively counsel a person with a different perception of how a government and a judicial system operates?" Victoria feared governments in general, even the U.S. government, and was afraid that information contained in briefs would get back to her native country and cause problems for people she knew there.

Despite these difficulties, Zick numbers Victoria's struggle for political asylum as "one of the most satisfying cases that I've ever been involved with." "It's wonderful when you're thoroughly convinced of the righteousness of your client's cause." He added that being involved in such a case made him appreciate his freedom as a US citizen and the inherent justice in the system. In addition to personal satisfaction, Zick's fee consisted of a Chopin album and a book about the buildings of Victoria's homeland.

Ward, who has since graduated from Wake Forest and works for the Encino, California firm of Lewitt, Hackman, Hoefflin, Shapiro and Marshall, said Zick should be commended for his efforts on the case. "He knew when to push hard and when to pull back" in the delicate balance of an immigration case. Ward said Victoria's case took eight months whereas many such cases take years to resolve and that Zick handled the case "like he had handled fifty of them before."

Victoria will be eligible for US citizenship in four years. Meanwhile she is studying Slavic languages and political science at a major university. Her future plans include law school and a possible career in immigration law. She may also write a book about her experiences and her native country.

By Dean Hollandsworth, a second-year student from Greensboro, NC.

Business Courses Added to Curriculum

Every Thursday night in Carswell Hall, 23 law students sit around a long table on the quiet third floor and challenge their prospective Juris Doctor degrees with concepts of a business curriculum. The challenge comes mostly from one end of the table, where Adjunct Professor Larry Roth presents legal issues of international business transactions — one of several new business law courses the law school is offering this year.

Those issues range from the obvious of exchange rate fluctuations and shipping contracts, to the more innocuous that can turn a business or legal discussion into an embarrassing moment. According to Roth, a 1978 graduate of the New York University School of Law, the etiquette of international business can raise its eyebrows in ways that Miss Manners never considered.

"In Arab countries, the Koran doesn't allow charging interest," he said. "There are Arabian banks doing very well, but call it 'fees and commissions' please."

Beside an overview, the two-hour course covers 10 major topics over the fall semester: international contracts, foreign corporate forms and joint ventures, international leasing, financing, taxation, exchange fluctuations and exchange controls, dispute resolution, customs and other considerations, political constraints on trade, and international business customs, ethics and culture.

Though similar in many respects to domestic business, each topic has its own special character in the international setting and its own special problems that can vary between countries. Because lawyers are problem solvers, legal advice throughout an international transaction can be crucial.

"It's enormously more complicated than domestic commerce — even when you speak the same language," Roth said. "And if you don't speak the same language, that's another problem."

Because it requires special expertise, demand is high for good lawyers with a solid business background, Roth said. It is also to Wake Forest's credit that the law school recognizes this need and has pushed for an increased business curriculum while maintaining a strong emphasis on litigation.

"The top jobs in the profession are with larger law firms, and they need lawyers who can do more than just litigate," Roth said.

Though Wake Forest reached across the Atlantic Ocean to pull Roth from his job as senior tax and corporate services manager with Price Waterhouse in Abidjan, Ivory Coast, the law school will stay closer to home this

spring with two other adjunct professors teaching business law courses.

James A. Gould is assistant general counsel for litigation and related matters at R.J. Reynolds Tobacco Company in Winston-Salem. A 1976 graduate of the University of Chicago Law School, he will be teaching a course on "Complex Civil Litigation" that has been taught only at Chicago and several other law schools.

"The course involves working through a preliminary injunction case involving a misappropriation of trade secrets," Gould said. "The idea will be to focus on the areas that are particularly important in a complex civil case, such as a dispute between two corporations."

From the first day, students taking the two-hour course will be considered associates of a law firm representing a fictitious zipper manufacturer. Through memos, briefs, discovery and exhibits the story will unfold of how a senior vice president left the manufacturer, took key information with him, and opened a competing zipper company. The course will teach skills such as deciding which discovery to use, how to select and prepare expert witnesses for particular purposes, and other elements of complex civil cases.

"These types of cases are common for larger law firms representing businesses," said Gould, who came to Reynolds in 1986 from specializing in complex civil litigation as a partner with Kirkland & Ellis in Chicago.

Computers will also get a lot of attention this spring when Frederick L. Cooper III returns to his alma mater as an adjunct professor to teach "Computer Law." Cooper received both a bachelor's degree and a Juris Doctor at Wake Forest, and is now a managing partner in the computer/communications department with Hurt, Richardson, Garner, Todd & Cadenhead of Atlanta.

The first part of the two-hour spring course will investigate how attorneys can protect proprietary rights in computer and communications technology, which Cooper said is quite challenging given the explosive growth of computers and the "deregulation" of telecommunications. Other subjects covered in the semester include how to limit liability in marketing computer and communications technology, and how to create distribution and partnering agreements for that technology.

"Computers and communications companies have unique legal issues due to the nature of their products," Cooper said. "'Intellectual' property such as software often follow different rules than standard products, and lawyers who can guide and protect the development of that property have significant roles in the industry."

Associate Dean Kenneth A. Zick said the new business law courses being offered this year are part of the Wake Forest University School of Law's "440 Plan" adopted in 1984. The plan endorses the school's strong emphasis on litigation, yet recognizes an increased need for business studies — as reflected in the significant number of business law courses already in the curriculum. In addition, he said that new faculty-taught courses, such as "dispute resolution" and "pre-trial practice and procedure" also have applications in the business world.

"A natural evolvement of the 440 Plan is to increase an emphasis in the relationship between business, technology and the law," Zick said. "Dean Scarlett and his committee are continuing to search for a Distinguished Chair in Law to further develop law courses with a business emphasis."

A Juris Doctor degree and a strong business background can often give law graduates a competitive advantage when looking for a job. But that advantage also translates into more capable lawyers with horizons not limited by the courtroom. Through its business law courses, Wake Forest continues to expand horizons while maintaining a solid curriculum of litigation — an unbeatable combination for today's attorney.

By Kenneth Carlson, a first-year student from Winston-Salem.

Len Cohen Wins Student Trial Bar Finals!

It was Friday, October 9th, 4:00 pm, and a crowd of people were gathered in the courtroom in Carswell Hall. Two young men sat at the front of the room, fidgeting nervously as they awaited the arrival of Judge William H. Freeman. At last bailiff Mike Archenbronn cried "All Rise!" and the final round of the Student Trial Bar First Year Competition was underway.

At stake was the fate of one Officer Brian A. Leslie, a vice-officer with the

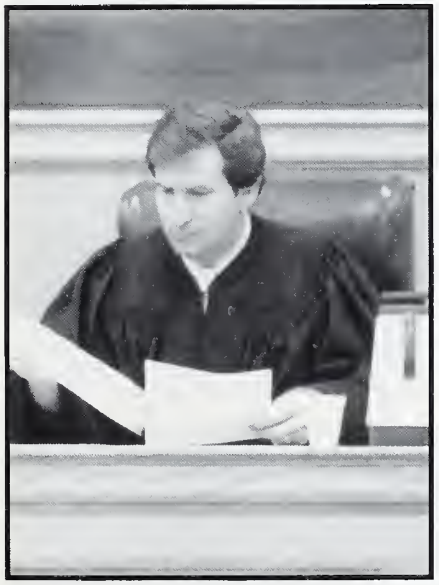
Prosecutor Cohen points toward the accused during his closing argument. (photo by Poole)

Winston-Salem Police Department. Officer Leslie was charged with the unlawful possession of 15.3 grams of cocaine which was found in his locker at the police station. Twelve students occupied the jury box to participate in voir dire, and to hear the opening statements and closing arguments of the student attorneys.

The participants were Len Cohen, who prosecuted Leslie for the State of Wake, and Rodney Pettey, who defended Leslie.

The primary issue to be decided was whether Officer Leslie had been framed, or whether he had yielded to financial and personal pressures and begun to sell narcotics confiscated during police raids. Both men delivered truly exceptional performances, with Cohen emerging victorious.

Freeman, a Wake Forest law alumnus, commented that both students did an "outstanding job." Freeman said the match of their abilities was "uncanny," and although he was "very confident"



Superior Court Judge William H. Freeman presiding over trial bar finals. (photo by Poole)

in his ability to choose between them, he "could have flipped a coin." After careful consideration, he gave the nod to Cohen.

This year's competition marked a record turnout for Trial Bar with over 80 students participating. Each contestant was required to prepare and deliver a voir dire, opening statement, and closing argument. Owing to the large number of participants, the Student Trial Bar extended offers of membership to 24 students instead of the usual 20, with 16 students advancing to elimination rounds.

Wake Forest was very honored to have Judge Freeman preside over this competition and Trial Bar extends its appreciation to him. Congratulations and thank you to Len, Rodney, and all who particiated to make the Annual First Year Trial Bar Competition a great success!

By Rebecca Fry, a second-year student from Lewistown, Montana.

New Faculty

This fall there are two new additions to the law faculty at Wake Forest.

Many things lured Labor Law Professor Lorraine Schmall to Wake Forest. She is the first to admit that the "beautiful campus and incredible weather" were important considerations.

Schmall received her law degree from George Washington University. She practiced labor law in Chicago and was a teacher and research fellow at the University of Chicago Law School for a year. While in practice, she taught as an adjunct professor at several schools in the Chicago area.

Lorraine Schmall

Schmall came to Wake Forest because of the opportunity to teach Labor Law and Employee Relations. "I thought it was an ideal teaching situation," she said. "The school is committed to developing a program in labor law."

Michael Gerhardt

Michael Gerhardt is the new professor for Constitutional Law. He comes to Wake Forest from Washington, D.C., where he was an associate in a large firm. He did civil and criminal trial and appellate work with teams of lawyers handling complex issues. Gerhardt attended law school at the University of Chicago. He worked for judges in the federal district court in Memphis and the 6th Circuit Court of Appeals. He was, and still remains, involved in the campaigns of Sen. Albert Gore.

This is Gerhardt's first teaching position. He saw this as a good opportunity to begin because he is able to teach the subject he is most interested in. "I'm enjoying it," Gerhardt said. "It's hard work of a different nature."

Gerhardt wants anybody interested in discussing Constitutional issues or law in general to feel free to talk with him.

By Kristen Gore, a first-year student.

Raag Singhal addresses the bench. (photo by Dellinger)

Singhal Wins Stanley Cup Competition

Raag Singhal successfully argued that a prison run by a private corporation was a state actor to win the 16th Annual Stanley Moot Court Competition.

Fifty-six second and third-year students competed in the competition, which began September 17, 1987. This year's problem involved a prison facility, run by a private corporation, which instituted drug testing through urinalysis. The students were faced with the issue of whether the prison facility was a state actor, and if so, whether the urinalysis testing was an illegal search and seizure under the 4th Amendment.

After spending four weeks preparing their briefs, students were expected to argue both sides of the issues. The final round of the competition, held October 30, was judged by: The Honorable John L. Coffey, United States Court of Appeals for the Seventh Circuit; The Honorable James D. Phillips, Jr., United States Court of Appeals for the Fourth Circuit; The Honorable James G. Exum, Chief Justice, North Carolina Supreme Court; The Honorable Michael F. Cavanagh, Michigan Supreme Court; The Honorable Sam J. Ervin, III, United States Court of Appeals for the Fourth Circuit; and The Honorable Robinson O. Everett, Chief Judge, United States Court of Military Appeals.

Jim Hutcherson was the runner-up in the competition, and tied with Jim Hill for the James C. Berkowitz Award for Best Oralist. The award for best brief went to Jennifer Baucom.

According to Chris Werte, co-chairperson of this year's competition, "Wake Forest University has one of the most prestigious benches of any intramural competition in the country. Our bench is as good as many of the external competition benches."

The competition is open to all second and third year students who are not on Moot Court Board. The Board is organized by an eight member committee. The committee begins to prepare for the competition six to seven months before the two month competition actually begins. The committee is responsible for writing the problem, which usually involves a constitutional issue; inviting and coordinating the attorneys and judges who judge the rounds; and publicizing the event.

So many students enter the Stanley Competition, according to Werte, because "Wake Forest is nationally known for its Moot Court competitions, which not only attract students to the competition, but also is a big reason why some students choose to attend Wake Forest."

By Donna Colberg, a first-year student from West Virginia.

Runner-up, Jim Hutcherson greets the dinstinguished panel. (photo by Dellinger)

Roberts Leads Abolition of the Rule in Shelley's Case

On July 29, North Carolina law took a small, deliberate step into the 20th century with the legislative abolition of the Rule in Shelley's Case.

Wake Forest Law Professor Pat Roberts led the North Carolina Bar Association's successful campaign to overthrow the rule. She represented the Association's 12-member Estate Planning and Fiduciary Law Section.

Pat Roberts

Until this year, North Carolina was one of five states that still recognized the Rule, which courts and commentators steadfastly criticize as an intent-defeating anachronism.

The Rule works like this: where in one instrument, the grantor gives a life estate to one person, then a remainder in fee simple or fee tail to that person's heirs or issue, and the estates granted are both legal or both equitable, the Rule gives the life tenant a fee simple absolute (or fee tail, as the case may be). The Rule applies regardless of the grantor's intent.

For instance: Testator's will give Blackacre "to A for life, remainder to A's heirs." The will further provides that "the Rule in Shelley's Case must not be applied to this gift."

Testator's intent notwithstanding, North Carolina courts would have been compelled to apply the Rule. A's heirs would get nothing.

The North Carolina Bar Association took up the fight, and for ten years running has sponsored bills to abolish the Rule. Roberts volunteered to lead this year's effort on behalf of the Association's Estate Planning and Fiduciary Law Section, headed by Wachovia Senior Vice President William Rudolph.

"I tried not to be too optimistic about our prospects," she said. "I was vaguely aware that there had been frequent attempts to abolish the Rule. At one point, somebody said 'It's becoming a joke: who's going to sponsor the bill to abolish the Rule in Shelley's Case this year?' "

Roberts travelled to Raleigh in May, June, and July to testify before House and Senate subcommittees concerning the bill, which was sponsored by State Senator Henson Barnes, of Goldsboro. Additionally, Roberts attacked the Rule in the Bar Association's March, 1987 newsletter, "The Will and the Way."

She encountered some difficulty in the House subcommittee. The original wording of the bill was considered by some to be "too ambiguous."

"Someone submitted an amendment that attempted to clarify the language used in the bill," Roberts said. "the effect was that the bill was put on hold for a while. A lot of us were very discouraged. At that point, we thought it wasn't going to get through. It was just going to have to come up again next year. "Three or four weeks passed, and (Bar Association Legislative Counsel) Ann Christian telephoned one night to say 'the bill is coming back up tomorrow. Can you come over and testify?' "

The amended bill simply provided that "the Rule in Shelley's Case is hereby abolished."

"That was fine with me," Roberts said.

Resistance to her efforts, she said, stemmed mainly from the fact that most legislators, including those who are lawyers, simply do not understand the rule.

"They're afraid to abolish something they don't understand, and they know that the Rule has been around forever," Roberts said. "They know this is not the burning issue of the day. They might have imagined that if they got rid of something that has been around for so long, it might create new problems."

One legislator offered a classic reason for retaining the Rule: "He learned it in law school, and he wanted future law students to have to learn it," Roberts said.

"Over the years, it has become an unpopular rule because it is intent-defeating" Roberts said "So courts have strained to find ways to avoid it. The upshot of all this is that the Rule has become unpredictable, and that's where it gets to be a malpractice trap."

"Another legislator brought up the question, 'Well, doesn't it have the effect of making property more alienable?' I couldn't disagree with that," she said. "My response is that there is no public policy against tying property up for one generation. Technically, without the Rule, the property still isn't inalienable anyway. It might not be as marketable, but it's not inalienable.

"But the main point is that, even if application of the Rule makes property fully alienable one generation sooner, the sacrifice is too great," Roberts said.

Those who were forced to learn the Rule and who believe that others ought to suffer similarly can take comfort in the knowledge that the Rule still applies to conveyances that take effect before Oct. 1, 1987. Thus, the Rule will still be taught in Property, Future Interests, and Wills classes.

By Nathaniel Proctor, a third-year student and Editor-in-Chief of the Wake Forest Law Review.

News Briefs From Carswell Hall

Women-In-Law

Women-In-Law of today is a different organization than the one formed in the 1970s. Today it is a social organization consisting of women and men. Events scheduled for this year include several distinguished speakers, the first-year exam seminar, several "Happy Hours", and the annual "Pig Pickin". Come join the fun!
President: Kim Kauffmann
VP: Stephanie Irvine

American Bar Association/Law Student Division

Of all the student organizations within the law school, only two serve the needs of all students! SBA and the American Bar Association/Law Student Division (ABA/LSD).

ABA/LSD at Wake Forest is a student/community service organization that provides you, the law student, with many professional opportunities. One of these opportunities is the chance to affiliate yourself with the professional organization to which over half of all lawyers belong, The American Bar Association.

ABA/LSD has many benefits. These include: reduced rates on bar reviews, subscriptions to *Student Lawyer* and the *ABA Journal,* access to reasonably priced special interest educational materials, and much more.

ABA/LSD provides practical, "hands-on" benefits too. Last year, ABA/LSD representatives helped arrange and administer the 4th ABA Circuit Client Counseling Competition held here at Wake Forest. ABA/LSD sponsored a very successful VITA (Volunteer Income Tax Assistance) program.

This year's ABA/LSD staff consists of 3L Karl Frantz and 2L's Robin Luffman and Jon Fullenwinder. Currently, ABA/LSD is discussing more community service projects with the Public Interest Law Organization. We welcome all who are interested to lend a hand.

Black Law Students Association

The Black Law Students Association (BLSA) Chapter at Wake Forest is affiliated with the regional and national BLSA organizations. BLSA's goal is to foster a greater awareness of the needs of minority students at the law school and is committed to the personal growth and development of students. Anthony Tansimore is the President for BLSA this year.

Federalist Society

The Federalist Society is an organization that gives students with conservative and libertarian philosophies a forum to express their viewpoints. The organization takes its name from the Federalist Papers, which were written to persuade the states to accept the proposed constitution.

Some of the principles that the Federalist Society is based on are: (1) that separation of powers is essential to preserve the government formed by the constitution, (2) that the states exist to preserve individual freedom (as opposed to a centralized bureaucratic state), and (3) that it is the duty of the judiciary to state what the law is, and not to legislate by saying what it thinks the law should be.

The Federalist Society was founded in 1982 by then professor and now Justice Antonin Scalia at the University of Chicago Law School. Chapter President at Wake Forest Law School is 3L Jerry Wigger. The group meets about three times a semester, invites speakers, and has debates of current events. National dues are $5 which includes quarterly issues of the Harvard Journal of Public Policy.

Participants line up for SBA's annual Race Judicata.

Student Trial Bar

The Student Trial Bar sponsors the 1st year Trial Competition held in the fall. Students conduct voir dire, opening and closing arguments. Final rounds this fall began October 9. This year's competition was judged by William Freeman, NC Superior Court Judge. Those individuals in the top 10 percent of the competition are invited to join Trial Bar.

Student Trial Bar also conducts the Zeliff Trial Competition in the spring. This competition is open to second and third-year students and gives a trophy and a cash award.

Officers for this year's Trial Bar are: Polly Sizemore — President, Dan Bryson — VP (Zeliff Trial Competition), Dan Sroka — VP (1st Year Competition), Chris Bramlett — Secretary/Treasurer, and Professor Wilson Parker — Advisor.

Phi Alpha Delta

PAD is a legal fraternity whose primary goal is service. In addition to numerous social functions, PAD has several service projects planned for the 1987-88 year. Among these are Special Olympic participation, Food Drive for Crisis Control Center, and participation in the spring pilot program of "Street Law". "Street Law" involves three or four visits by PAD members to area high schools to discuss legal issues encountered by teens.

Further, on July 18th, PAD hosted its Annual First Year Househunt which

was a great success. The event was attended by over one-hundred persons and approximately one-third of the first-year class obtained housing accommodations.

Also, PAD hosted a debate on the Bork nomination between Professors Rhoda Billings and Michael Gerhardt on September 2. The debate was very successful and attended by approximately 400 students and Forsyth County Bar members.

Moderator WFU Professor Katie Harriger introduces participants in the Judge Robert Bork confirmation debate sponsored by Phi Alpha Delta Law Fraternity.

PAD anticipates an exciting year and invites all interested students and alumni to contact a chapter officer.

International Law Society

The International Law Society promotes the awareness of international legal issues and thought. As a member of the Association of Student International Law Societies, the organization is able to promote job opportunities in international law. Recently, the Society has sponsored speakers connected with international law practice and the Regional International Jessup Competition.

The Christian Legal Society

The Wake Forest Chapter of the Christian Legal Society meets to discuss the relationship of the teachings of Jesus Christ in the *Bible* to our American legal system. In weekly meetings, the *Bible* serves as the foundational standard and definition of truth by which comtemporary law and public policy are compared.

The group also endeavors to serve the students and faculty of the law school through encouragement, prayer and devotion.

Moot Court

Fresh off winning the National Moot Court Championship in New York this past spring, the 1987-88 Moot Court Board will again play a vital role to uphold the law school's excellent reputation in the area of appellate advocacy and litigation in general. This fall, the Board will send intercollegiate Moot Court teams to the National Moot Court Competition to defend its title, to the Benton Invitational Competition in Chicago, and to the Jessup International Moot Court Competition.

Membership on the Moot Court Board is attained through outstanding performance in either the Stanley Competition or the First Year Moot Court Competition. Currently, the Board's membership stands at 67. The 67 members must fulfill competition and brief-writing requirements to maintain membership on the Board. The members are also required to act as advisors to non-Moot Court Board members who participate in the Board-sponsored competitions. Finally, members are required to act as judges for oral arguments and brief graders during each Board sponsored competition.

Public Interest Law Organization

The mission of the Public Interest Law Organization (PILO) is to educate and help law students find opportunities in public interest law. Public interest law includes government work as well as pro bono and non-profit organization work. PILO has organized a lunch-time speaker series and publishes a monthly newsletter to discuss these opportunities with students. In response to the recent ABA statement urging greater professional participation in public interest work, PILO assisted the law school administration in writing a grant to North Carolina IOLTA proposing trust account funding of student summer clerkship opportunities with public interest organizations. This proposal is currently under consideration. PILO will introduce a program of law student participation in the further funding of summer clerkship opportunities. PILO eventually hopes to establish a loan forgiveness program for those graduates who commit themselves to public interest law.

Law Students Civil Liberties Chapter

The Law Students Civil Liberties Chapter is a non-partisan student organization concerned with the defense and preservation of citizens' civil rights. The Chapter advances the cause of civil liberties in two ways:

(1) By sponsoring speakers programs—typically, debates—to examine timely issues in the law which have substantial impact upon individual civil rights; and

(2) By assisting attorneys working on civil rights cases. Our role typically involves researching and writing legal memoranda or briefs and frequently includes a chance to attend depositions and trials.

The Chapter has no official affiliation with the American Civil Liberties Union. However, to the extent that the ACLU uses its resources to protect freedom of speech, press and religion, the right to privacy and the right to fair and equal treatment under the law, the LSCLC enjoys a philosophical kinship with the ACLU. Whether we agree with a group's or individual's political or idealogical opinion is entirely irrelevant to the defense of civil liberties. It is the threat to civil rights, rather than the doctrine or philosophy espoused by the victim, which matters to the LSCLC.

Role of the Corporate Attorney in the Decision-Making Process of the Corporation

Dan Bryson*

We live in a litigious society. Perhaps nowhere is this more prevalent than in the corporate setting. Daily, one reads about multi-million dollar settlements and multi-billion dollar suits that are pending. The world is complex and this is certainly manifested in the operations of todays corporations. When the accounting function in businesses grew complex, CPAs replaced bookkeepers. When selling the product grew complex, marketing specialists were hired. Thus it was inevitable that the role of the corporate attorney would grow in importance. Businessmen want the job done well but in the cheapest manner possible. This is perhaps the foundation of why the role of the corporate attorney is growing.

During the past five years in-house legal departments have grown sharply—some by as much as 50 percent. According to some estimates 20 percent of the 600,000 lawyers in the U.S. are now[1] working directly for corporations.

What role does the corporate attorney play in the decision-making process of the corporation? This paper explores the topic and its implications for todays businesses. When appropriate, inextricably related topics are also discussed.

Theoretical Approach

Before delving into the corporate attorney's role a proper understanding of the actual decision-making process is required. Organizational behavior theorists have varying opinions but the basic premise is the same. Decisions are the making of choices. From an organizational perspective, the making of a choice is only one step in a larger process.[2] This larger process is the complicated scheme that the organization functions upon.

The traditional decision-making process as proposed by Stephen P. Robbins can be described as having six steps:

1. Ascertain the need for a decision.
2. Establish decision criteria.
3. Allocate weights to criteria.
4. Develop alternatives.
5. Evaluate alternatives.
6. Select the best alternative.

The process seems simple enough but in practice there are human and organizational constraints that act to modify this normative process.[3] Management meeting schedules and budgetary limits are to name but a few.

During the past five years in-house legal departments have grown sharply — some by as much as 50 percent.

L. A. Simon, who has written several books on the topic of organization design, treats decision making as synonymous with managing.[4] Simon states that the first phase of the decision-making process involves searching the environment for conditions calling for a decision. The second phase involves inventing, developing, and analyzing possible courses of action. The third phase is selecting a particular course of action from those available.[5]

More importantly, Simon goes on to say that:

> The executive's job involves not only making decisions himself, but also seeing that the organization, or part of an organization, that he directs makes decisions effectively. The vast bulk of the decision-making activity for which he is responsible is not his personal activity, but the activity of his subordinates.[6]

This principle, in turn, superimposes on the corporate attorney. Therefore, he is an integral part of the whole suprastructure of the organization. Obviously, then, the amount of organizational decision-making the corporate attorney is allowed to perform are parameters devised by his superior—often the CEO.

Organizational buzzwords are often used to define these parameters. Perhaps the corporate attorney is used for strategic planning or only day-to-day planning. Maybe he is included or excluded from various merger and acquisition negotiations. Maybe he is only used in implementing management decisions. Perhaps his duties are often preventive law. Of course the corporate attorney's role may be combinations of these choices. It is doubtful that the corporate attorney gets a memo from management saying, "There will be a strategic planning meeting at 1:00 pm", or "Preventive law will be practiced all afternoon". Organizational existence is dynamic and these processes can occur simultaneously.

Decision makers, however, are human beings and thus have human frailties . They recognize only a limited number of decision criteria. They propose only a limited number of

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[1]"A New Corporate Powerhouse: The Legal Department," *Business Week*, 9 April 1984, p. 66.

[2]Stephen P. Robbins, *Organizational Theory, The Structure and Design of Organizations* (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1983), p. 82

[3]*Id.* pp. 167-168.

[4]D. S. Pugh, ed., *Organizational Theory*, 2nd ed. (Harmondsworth, Middlesex, England: Penguin, 1984), p. 202.

[5]*Id.* at 203.

[6]*Id.* at 205.

[7]Robbins, p. 169.

alternatives. Further, the realities of organizational decision making tells us that the interest of the decision maker and the interests of the organization are rarely one and the same.[7] Simply illustrated, a breakdown of this process explains theoretically why corporations are sued and why they often go bankrupt.

"The ability of outside counsel to run up a $1,000 per hour bill sometimes is amazing."

Within the organization there are variations in the decision-making scheme that the executive can assign to the corporate attorney. He can dictate that the corporate attorney participate in all six steps of Robbins' criteria. Conversely, maybe the corporate attorney starts participating only at a certain step or only for that one partieular step. Also, the executive may dietate that the corporate attorney only give input in a decision step that others make. Finally, the corporate attorney may have no input at all in the steps. In these situations, his opinion may only be sought if the decision was a bad one that is now threatened with legal implications. Interviews with corporate counsel indicate that all of these alternatives occur. This will be discussed more fully later. Also, counsel may operate exclusively within one alternative or shift depending on the totality of the particular circumstances.

The particular circumstances that determine counsel's status in the organizational decision-making process are numerous, variable, and often complex. For example, the CEO or other management's particular managing style and personality; the amount of regulation in the particular industry; the personality of the attorney; the outside environment; competition; economic factors; etc. all affect the role counsel plays. The interrelationship of variables in the decision-making process has lent itself to many volumes and has no definitive answer.

Outside Counsel's Role

Theoretically there is little change for the role of outside counsel or private firms in the decision-making process of the corporation. If the corporation contacts the firm with a problem they should still go through Robbins' six steps. Practically and realistically however, they are vastly different. Also, as mentioned in the previous paragraph, whether they will even be contacted depends on various circumstances.

As a general rule, outside counsel are often retained for a particular, specialized purpose. For example, an environmental lawyer will be used for an environmental question.[8] Further, outside counsel are often used for litigation because in-house counsel do not have the honed skills that are necessary for day-to-day litigation.[9]

When used for a specialized purpose, outside counsel becomes the result of management's decision. Sometimes however, management or the in-house attorney realizes their expertise from the inception and let outside counsel make the decision. To slightly deviate from this proposal, management can utilize outside counsel's informational input as management proceeds through the decision-making process.

"The in-house attorney will be less likely to be a Don Quixote than outside counsel."

An important cireumstance that management utilizes is how well they feel outside counsel understands the corporate culture. Often a similar decision will differ between companies because of varying risk preferences. According to Gail Younger, in-house counsel for Cone Mills, a large textile manufacturer, "The corporate attorney has a tremendous advantage over outside counsel in knowing their corporation and their personnel and the way they do business. In-house counsel knows the real details of how you operate."[10] Terry Weatherford, general counsel for Blue Bell, a large textile and apparel manufacturer, adds, "It is so frustrating in dealing with outside counsel to try and get them to understand the philosophy of the company. As a general rule they don't know the day to day operations of the company well enough to serve it well."[11]

In summary, private firms have failed their corporate clients in two major ways. The firms became proficient at swift, precise reaction rather than planned strategy or prevention. Stated another way, putting a bandage on instead of curing the illness. Secondly, the firms, whose bills were seldom questioned, seemed to believe that more work was better work. This translated into huge legal bills. According to Weatherford, "The ability of outside counsel to run up a $1000 per hour bill sometimes is amazing. When businessmen see that, it becomes somewhat distasteful and they look for ways to help keep the cost down".[12]

Describing the conflict between outside counsel and the corporation at first glance may appear to have little relationship with their role as corporate attorneys in the decision-making process. However, all of the factors previously discussed show that the amount of decision making done by outside counsel has been severely curtailed in recent years and relegated to more defined situations—i.e., litigation. As stated by an anonymous in-house counsel of a $3 billion-a-year corporation, "The in-house attorney will be less likely to be a Don Quixote than outside counsel. The in-house attorney doesn't charge at every windmill."[13] Indeed,

[8]Personal interview with Gail Younger, Corporate Counsel, Cone Mills Inc., Greensboro, NC, 4 August 1986.

[9]Personal interview with Harold Beavers, Partner in Beavers & Jacobson, Greensboro, NC, 1 August 1986.

[10]Younger interview.

[11]Personal interview with Terry Weatherford, General Counsel for Blue Bell, Inc., Greensboro, NC 31 July 1986.

[12]Weatherford interview.

[13]Personal interview with an anonymous source, Greensboro, NC, 31 July 1986.

[14]"A New Corporate Powerhouse: The Legal Department." *Businessweek*, 9 April 1984, p. 67.

[15]Weatherford interview.

there are many decision-requiring situations where every stone need not be turned. Often in volatile markets a quick and correct decision is needed. Management may not have time for the amount of time it will take a private firm to reach a careful, detailed decision concerning a particular matter.[14] This plodding may be due to the lack of outside counsel's in-depth understanding of a particular strategy. According to Weatherford, "Most of the time we shoot from the hip and decide. I think we do a good job...(and our past record shows that)".[15]

In summation, outside counsel's role in the corporate decision-making process is to be a supplier of pieces for the puzzle of a particular corporate decision. According to Harold Beavers, a partner in Beavers and Jacobson, a private firm that has almost exclusively corporate and business clients, "My function is not to advise corporations on their day-to-day operations. My job is to take specific situations they have and work with them. Smaller corporations are the ones that often call up and ask for advice."[16] Thus, the trend that is likely to continue precludes outside counsel from having an integral role in the direction and future of a particular corporation.

"Most of the time we shoot from the hip and decide. I think we do a good job... (and our past record shows that)."

Practically applied, corporate counsel's role really began to emerge in the '80s. According to Weatherford, "Literature about corporate counsel's emerging dominant role in corporations really didn't begin to appear until around 1981."[17]

History of the Corporate Attorney

In the '30s the road to becoming chief executive officer of a corporation was paved through the company's legal department. Those who weren't CEO might still have been one of the top three in the company. However, in the '40s the road to the top was coming out of business school—the MBA. In the '50s or '60s the corporate attorney's role was more nine to five and mainly legal advice—not overall corporate strategy. In the '70s the corporate attorney was coming back as the winds shifted again. One reason for the comeback was a stunning rise in the cost of legal services rendered by outside firms. By the mid '70s there were some eighty agencies impacting all businesses: EEOC, OSHA, DOE, EPA and on and on.[18] Add to this the avalanche caused by information systems, as well as the current craze for acquisitions and mergers, and you have a climate just right for the explosive growth of legal departments. In the '80s any corporation that makes a major decision without some input from corporate counsel is begging for an expensive lawsuit.

To summarize, the reason in-house counsel's role in the decision-making process has expanded can be attributed to the following factors:

1. COST—According to Dick Gray, general counsel for United Guaranty, "Basically it's a make or buy decision. If you go outside you buy and if you do it inside you make it. It reaches a point where the economies of scale dictate that it would be cheaper to do it inside than buy it. When you buy, you pay for time, materials, overhead and profit. When you make it, you cut out the profit. There's no senior partner here trying to make $10x off the work I do."[19]
2. KNOWLEDGE OF CORPORATE CULTURE—Certainly, a "feel" by the corporate attorney for the organization and its personnel have been cultured by years of association that lends itself to greater counsel effectiveness.

"CEO's and other type A personalities like to have an office they can walk into and have the attorney drop whatever he's doing."

3. KNOWLEDGE OF CORPORATE GOALS AND OBJECTIVES—According to Weatherford, "I attend all management committee meetings...due to that I have a better feel of what decision making is going on."[20] Chuck Carlson, general counsel of Gilbarco, a manufacturer of gasoline pumps, adds, "I work closely with the management committee that runs the company. We work out the senior level problems together. We try to reach a consensus in most cases. We balance all of the inputs and disciplines."[21] Such knowledge by corporate counsel is very valuable.
4. CONVENIENCE—Says Beavers, "The corporation likes corporate attorneys because they have more control over them and are always available. Having a full-time attorney gives them a sense of security and convenience. CEO's and other Type A personalities like to have an office they can walk into and have the attorney drop whatever he's doing."[22]
5. MANY ARE BECOMING GOOD BUSINESSMEN—Comments Carlson, "Clearly in this company to be successful you have to be a good businessman and good lawyer."[23] Given the litigious possibilities of many organizational decisions, the attorney who is also a good businessman can play a crucial role in helping guide the organization to success.

Having discussed why the role of corporate attorneys in decision making has expanded, it becomes important to

[16]Beavers interview.
[17]Weatherford interview.
[18]Charles Maher, "Corporate Counsel Come in from the Cold," *California Lawyer*, 4 (1984), p. 44.
[19]Personal interview with Richard Gray, General Counsel for United Guaranty, Greensboro, NC, 31 July 1986.
[20]Weatherford interview
[21]Personal interview with Chuck Carlson, General Counsel for Gilbarco, Inc., Greensboro, NC, 1 August 1986.
[22]Beavers interview.
[23]Carlson interview.
[24]"The Role of the Corporate Attorney in

discuss specific areas of decision making where the corporate attorney is involved.

Role in Strategic Planning

The corporate attorney should play a role in strategic planning. "Identifying legal problems from the outset of a strategic plan places the company in a better position to weigh the benefits of certain strategic objectives versus the potential legal costs of attaining such objectives," says Thomas Naylor and Ellen Peirce. Naylor is Director of the Center for Corporate Economics and Strategy, while Peirce is an Assistant Professor of Legal Studies in the School of Business Administration at the University of North Carolina at Chapel Hill.[24]

Naylor and Peirce view strategic planning as consisting of four basic elements:

1. A REVIEW OF THE COMPANY'S EXTERNAL ENVIRONMENT. In this element they visualize five areas of concern the attorney can help with. First, the competitive environment as viewed by the attorney involves a heightened perception of the Sherman Antitrust Act, and other potential pitfalls. Secondly, with factor supply the attorney knows how to properly deal with a contract and other implications. Thirdly, technology is an area of legal expertise if the attorney is familiar with patents and copyrights. Fourthly, a primary responsibility of corporate counsel should be keeping abreast of changes in the political and regulatory environment in which the firm exists. Lastly, the corporate attorney should always monitor changes in the international environment that can lead to nationalization of company properties.
2. A SITUATION ASSESSMENT. During the course of a situation assessment the corporate attorney can raise many legal issues concerning the interrelationship of the external environment with the internal. For example, potential OSHA and EPA regulation violations, as well as various employee relation laws, are legal issues counsel can raise. Solving these areas beforehand can indicate early viability of the plan.
3. FORMULATION OF CORPORATE GOALS AND OBJECTIVES—"Again, corporate counsel can provide an early warning system to alert senior management of possible legal problems on the horizon in connection with projected goals and objectives," says Naylor and Peirce.
4. PROPOSAL OF STRATEGIC ALTERNATIVES—This element has three areas of concern. Naylor and Peirce explain:

> The portfolio problem is concerned with which businesses should the company engage in and how should such businesses be financed. The investment problem refers to the question of which resources to commit to each business. Finally the strategy selection problem is how each business should position itself in the marketplace.

It is obvious that there are many important legal issues involved in these areas.

In conclusion, what Naylor and Peirce advocate is a more positive, comprehensive and aggressive role for the corporate attorney. By actively participating, the corporate attorney can help reduce legal and financial risks.[25]

"There's no senior partner here trying to make $10x off the work I do."
—Dick Gray, general counsel for United Guaranty

Indeed, this insightful article is not hollow theorizing. It represents the trend for the future. Says Martin G. McGuinn, general counsel for Mellon National Corp., the Pennsylvania bank holding company, "We help plan strategy, participate in negotiations, and then implement the merger."[26] Carlson of Gilbarco also strongly emphasizes his important participation in strategic planning. He adds, "A lot of it depends on the personality of the individual. Also, how forceful a salesman you are determines your influence. Sometimes with acquisitions and mergers the financial and legal people are kept out—but not around here."[27]

However, the foregoing discussion is not without boundaries. Says Dick Gray, general counsel of United Guaranty, "Our business is more static than say a bank. We basically write one line of insurance. We're limited by law as to what we can do. If we had a line of products we probably would do strategic planning."[28]

Role in Negotiations

One views strategic planning as a process that takes place within the boardroom. But what about negotiations? Negotiations are certainly a form of decision making different from strategic planning. Unlike strategic planning where careful reflection can occur, negotiations often take place in a more dynamic atmosphere. Negotiations are communications between two or more people that can result in a decision.

Says JB Fuqua, CEO of Fuqua Industries, "Many lawyers are not good negotiators and many lawyers are—but in any event, to bring in a lawyer at the beginning, if you are dealing principal to principal, is one way to kill a deal, in my opinion."[29] Adds Sidney Topot, chairman and president of Scientific Atlanta, Inc., "If you bring the legal aspects in too soon you will lose the order because somebody will

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Strategic Planning," *Managerial Planning*, March-April 1983, p. 4.

[25] *Id.* at. 6 and 16.

[26] "A New Corporate Powerhouse: The Legal Department," p. 67.

[27] Carlson interview.

[28] Gray interview.

[29] J. B. Fuqua, Daniel J. Haughton and Sidney Topol, "What CEO's Expect of Their Corporate Lawyers," 36 *The Business Lawyer*, 606 (1981).

[30] *Id.* at 611.

[31] Younger interview.

[32] Anon, interview.

[33] Weatherford interview.

[34] *Id.*

get frightened. If I brought my lawyer with me every time I went out on a sales call, I am not sure we would get an order."[30]

"Some managers want to take their lawyers to the table and some don't. A lot of people want to say, "I can't sign this until I take it back to my lawyer and let him look at it." This is a negotiating technique. They don't want their lawyer sitting there at the table. They always want that fallback so they can go back and look at it again," continues Younger of Cone Mills.[31]

Of course an anonymous source was quick to point out that some negotiations are purely business and some require legal aspects that must be dealt with even in negotiations. This is necessary to warn of potential violations.[32]

However, the trend seems to be that negotiations among upper management involves an exclusion of corporate counsel. This statement is probably best exemplified in the following example. Cone Mills, a highly leveraged apparel company, was recently sold to VF Corporation for close to $1 billion. Terry Weatherford, general counsel, says he knew nothing about the deal until there had been a handshake and he was asked to draw up the papers.[33]

Role in day-to-day operations

The last area of decision making that merits discussion are those decisions involving the overall tactical operation of the organization. What role does the corporate attorney play in the day-to-day operations? Of course, the strategic plan somewhat dictates the corporation's direction but doesn't involve the countless decisions that must be made on a daily basis. An astute explanation of this area is best stated by Weatherford, "We get so many different questions. We don't just represent a big corporate entity. We do a lot of work with individuals and their problems and concerns. A corporation is made up of individuals. For example, in Oklahoma, we thought we were doing a guy a favor when we gave him some denim. He went out and put it in a gully. The first rain came and caused it to run and the dye ruined a pond and killed all the fish. We violated every environmental law out there. At times like this we're dealing with the individual."[34]

Thus, as in the past, a large part of the in-house attorney's routine involves putting out fires. Research has indicated that all levels of management within the corporation are sensitive to possible legal implications in most decisions they make. Comments Younger of Cone, "When you do something really good for them (management) they gain confidence in you. Then when you say 'I'm sorry, this is a real problem,' they still have confidence in you and are more ready to accept them."[35]

"I read the other day that there is a question as to whether a chief counsel ought to blow the whistle if he is not satisfied with what management is doing. That never occurred to me. My only remark about that is, if he's dissatisfied with what's going on in the corporation, like any other member of management, he should go someplace else."

When the corporate attorney becomes very familiar with a particular corporation, he can begin to anticipate problems before they occur. This is known as preventive law. Says Weatherford, "The primary job of in-house counsel should be preventive law. In an ideal world that's what we should shoot for, even when drafting a contract. How much we actually do is probably not even half. You do not have the luxury of sitting around and saying this is how it should be, you have to react to problems as they come up. The practice of preventive law involves some resentment toward lawyers. Anytime we tell them they can't do something it's a hindrance to them. They are under pressure too, and sometimes when we're out of sight we're out of mind and away they go. It's part of the educational process to tell them "no", then show them why. They grow in their jobs and see the legal problems involved. A sort of camaraderie develops. You develop rapport and sometimes they call you too much."[36]

It is important the corporate attorney realize that he is not part of line management. He is part of the support staff and his expenditures are often charged out to various cost centers within the organization. Like finance, marketing, or production, the importance of the legal sector should not be underestimated. Together they help create a synergy that successfully drives the organization. Legal advice pervades all areas of the corporation and as discussed, the "yea or nay" of the corporate attorney often determines the outcome of a particular decision. Or at the very least when an attorney says "no", the attorney and management attempt to rethink the problem and solve it from another angle.

Ethical Considerations

This statement leads to a related area that merits discussion. If an attorney plays an integral role in the decision-making process it can lead to ethical problems.

Daniel J. Haughton, former CEO for Lockheed Corporation, made an interesting comment, "I read the other day that there is a question as to whether a chief counsel ought to blow the whistle if he is not satisfied with what management is doing. That never occurred to me. My only remark about

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[35]Younger interview.

[36]Weatherford interview.

[37]J. B. Fuqua, Daniel J. Haughton and Sidney Topol, p. 608.

[38]"A New Corporate Powerhouse: The Legal Department," p. 70.

[39]Weatherford interview.

[40]Marie J. McIntyre, "Can In-House Counsel Be Trusted with Access to a Competitor's Confidential Information?: US Steel Corp. v. United States," 58 St. John's Law Review 902 (1984).

[41]Harry N. Turk, "The Practical Labor Lawyer," *Employee Relations Law Journal*, 10 (Winter 1984-1985), p. 553.

that is, if he's dissatisfied with what's going on in the corporation, like any other member of management, he should go someplace else."[37]

This statement raises a serious concern. If the attorney is working very closely with management to achieve a goal he may lose objectivity. When the attorney is trying very hard to "do a deal" he loses some of his value.[38] He may overlook or ignore various legal implications in his zeal. Even Weatherford at Blue Bell admits that outside counsel is sometimes retained because of their objectivity.[39]

The charge that in-house lawyers are mere creatures of their companies is made worse by other companies hesitancy to hand over competitively sensitive documents during litigation. Of course, the attorney-client privilege forbids the attorney from revealing any confidential information he receives without consent. Failure to observe this rule can result in disbarment or some other appropriate discipline.

In *U.S. Steel Corp. v. United States* the court formulated a case by case analysis for disclosure of confidential information to guard against unwarranted disclosure to outside counsel and the subsequent preclusion of disclosure to deserving in-house attorneys. The efforts of corporations to increase the use of inside counsel will not be hindered, the Court ruled.[40]

In summary, if legal problems ultimately arise over a decision the corporate attorney has been closely involved with, the attorney's ability to be an impartial evaluator of the facts and law and then represent the company becomes severely compromised.[41]

Suffice it to say that this area is complex and the last word from the courts has probably not been heard. One could probably categorize the area as an effort not to cross a certain line. Where the line is though is uncertain.

Role in Educating Managers

A final topic to briefly discuss involves managerial competence. The corporate attorney plays an indirect role in the decision-making process when he teaches management basic legal principles. The manager then retains this knowledge and applies it when he makes a decision.

Gary Moore, a professor of business and economics, and Stephen Gilley, an attorney, did a survey that included an extensive number of corporate attorneys. In this survey they sought to determine their views on the legal competence of managers. Moore and Gilley's overall conclusion was that respondent attorneys on the average rated managers as less than marginally competent. Moore and Gilley noted though that corporate counsel may be applying unrealistic standards in making these assessments.[42]

This can create problems if the manager has a "damn the torpedoes full speed ahead" attitude. Research indicates that corporate counsel makes a continuing effort to gain the confidence of managers as well as teach continuing education seminars. Hopefully, such efforts will help ensure that legal aspects are dealt with smoothly.

"In some ways corporate practice is the last of the general practices. We get so many different questions."

Finally, for the corporate attorney to increase his influence and avoid being relegated to any legal issues, he should work to become a good businessman. Comments Carlson of Gilbarco, "Sometimes I make decisions about things that are purely business issues or even personal. In this company it's expected and encouraged that you give your opinion on all issues." Whether or not Carlson's role will represent the dominant trend, only time will tell.[43]

Conclusion

In conclusion, the corporate attorney must realize the role the organization wishes him to fulfill and grow into it. The legal function is a vital one in the decision-making process of the corporation. Without exception, all research has indicated that the in-house legal department has a dynamic and growth oriented future. According to Terry Weatherford, general counsel at Blue Bell, "Dick Warren was my predecessor and used to say, 'In some ways corporate practice is the last of the general practices.' We get so many different questions."[44]

Obviously, when one makes a generalization about a certain topic there are polar examples at either extreme. In many organizations the corporate attorney may have a very small function, whether in-house or from an outside firm. Conversely, the organization may have a lawyer CEO. This paper has attempted to touch on several issues in a thought provoking manner. Both law and business is an imprecise profession creating a challenging future for the corporate legal profession.

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[42]Gary A. Moore and Stephen E. Gillen, "Managerial Competence in Law and the Business Law Curriculum: The Corporate Counsel Perspective," *American Business Law Journal,* 23 (1985), p. 387.

[43]Carlson interview.

[44]Weatherford interview.

The Vitality of Qualified Retirement Plans Remains Despite the 1986 Tax Reform Act

*Joel Bunkley, III**

A persistent notion resulting from the 1986's Tax Reform Act (TRA) is that qualified retirement plans have been neutralized by the new, lower corporate tax brackets.

Equally persistent and equally misleading are the claims in favor of alternative retirement plans, such as deferred compensation and "bonus" arrangements. This is not to say that given the right situation these arrangements do not have a place in financial planning. Rather they do not provide the incredible tax-leverage of a qualified plan. I am talking about a 50 percent (or more) after-tax advantage.

To illustrate - Chart A shows how the numbers work out for a 45 year old plan participant.

CHART A

Transaction	Deferred Compensation	Qualified Retirement Plan	Bonus Arrangement
Annual net cost	$ 10,000	$ 10,000	$ 10,000
Corporate tax (34%)	3,400	-	-
Corporate contribution to plan	$ 6,600	$ 10,000	$ 10,000
Employee tax (33%)	-	-	3,300
After-tax plan contribution	$ 6,600	$ 10,000	$ 6,700
After-tax yield on 10%	6.6%	10%	6.7%
20 year result	$276,137	$630,025	$283,649
Tax refund to corporation	+142,252 (1)	-	-
To employee (gross)	$418,389	$630,025	$283,649
Employee tax (33%)	138,068	207,908 (2)	-
To employee (net)	$280,321	$422,117	$283,649

(1) Tax savings (34% bracket) resulting from a payment of $418,389 to the employee.
(2) Without considering income averaging.

The 20 year results — even after taxes — clearly reflects the favored results weighted towards the qualified plan. [Incidentally, if you think that a 34 percent corporate tax bracket is unrealistic today, take a look at Chart B which shows the results under several brackets.]

CHART B

Corporate Tax Bracket	Personal Tax Bracket	$10,000/yr; 20yrs; 10% Deferred Comp.	Qual. Plan	Qualified Plan Advantage
15%	33%	$351,677	$422,117	+20%
25%	33%	$311,902	$422,117	+35%
34%	33%	$280,321	$422,117	+50%
39%	33%	$264,326	$422,117	+60%
		Bonus Plan	Qual. Plan.	
Any	33%	$283,649	$422,117	+49%

In the worst case scenario, the qualified plan enjoys a 20 percent advantage. Additionally, this is an excellent way in which to reduce the corporate tax bracket.

The bottom line being that the advantages gained from a qualified plan are too great to be ignored.

Of course every small business owner in approaching a retirement plan wants to be Santa Claus, but in the end becomes some form of Scrooge. In fact those decisions are premature, since in most instances a question of primary importance is what becomes of the tax advantages when the employees must be included in the plan?

The answer is that, even under TRA, plans can be designed so that 80 percent to 90 percent of a plan's contributions go to provide benefits for the owner(s). And those benefits are so large — thanks to the tremendous tax leverage of the qualified plan —that even with other employees in the plan, the owners still come out ahead.

To demonstrate I have taken a small firm with an owner, age 45, and three employees (See Chart C). For comparison purposes I have kept the gross contribution as close as possible to the $10,000 used in the original comparison and used a 10 percent accumulation rate for consistency.

Applying a few eligibility factors (Minimum age — 21; retire at 65, or with 10 years' participation) such as minimum age and participation, and by using a target benefit plan, I developed a formula that gives the owner 85 percent of the plan contribution. Pretty good, but not nearly as impressive as the owner's retirement fund — estimated at $538,986.

Whether you compare this gross figure or the after-tax (33 percent) figure of $361,121, the result still beats either alternative in *Chart A — and* the owner has the immense satisfaction of doing something for the business's employees — at the IRS's expense.

CHART C

Target Benefit Pension Plan

Partic. Age	Years Service P	F	T	Month. Comp.	Plan Deposit	Estimated Value at 65
45	13	20	33	$5,667	$ 8,555	$538,986
34	8	31	39	2,083	805	161,111
31	7	34	41	1,000	360	97,209
26	6	39	45	833	300	132,478
					$10,020	

To appreciate where the qualified plan develops its tremendous leverage, compare the *before-tax* contribution of $8,555 for the owner (Chart C) with the after-tax contributions (Chart A) of $6,600 under deferred compensation and $6,700 for the bonus arrangement.

Even in a plan that includes three other employees, the amount of money actually going to work for the owner, up front, is significantly higher under the qualified plan. The power of this up front advantage is then multiplied by the years of tax-deferred accumulation.

In many instances in dealing with small firms or professional offices, you'll find an owner much older than I've shown. This, in a sense, makes the job easier, since a plan with the same qualifying factors as previously illustrated will produce an even higher percentage for the older owner. Of course, a higher plan deposit will be necessary, because the owner has fewer years for accumulation.

Without question there is much more to a qualified plan than bare numbers. This is where such considerations as competent design and administrative support are of critical importance. However assuming you access to such support, you owe it to yourself to investigate the multiple benefits derived from qualified plans.

After all, how many investment vehicles today can offer a 50 percent after-tax advantage... along with an opportunity to reduce your corporate tax bracket?

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Zoning By Condemnation and Assessment

*Thomas E. Roberts**

Over the years, many have been concerned with the fact that zoning schemes prevalent in this country make no provision for reimbursing property owners who are wiped out by zoning changes or for recapturing the windfalls from property owners who benefit from such changes.[1] One answer is to pay compensation to the former, in effect using the power of eminent domain to condemn development rights, and to levy special assessments against the latter to finance the condemnation. The North Carolina legislature has pending before it a bill that is a partial response to these concerns.[2] While the bill submitted has some shortcomings and raises many questions, the idea of zoning by condemnation and assessment is intriguing.

Some simple examples illustrate the windfall and wipe-out problem.[3] *Example one:* Assume A owns a tract of land in a commercial zone that lies near a residentially zoned area. The property is valued at $100,000 for commercial use. Due to pressure from residents in a nearby small development of ten homes, the city downzones[4] A's land to residential use. For such use, its value is $50,000. While A loses $50,000 in anticipated development value, the nearby ten residential users gain $5,000 each in value by A's inability to use his land in a manner harmful to their property.[5] *Example two:* In the converse of example one, assume A's land is zoned for residential use and, so zoned, is worth $50,000. A petitions the city council for an upzoning to allow commercial use. Though the nearby residential neighbors object, the council rezones the land. A's land is now worth $100,000, and the homes of the neighbors are now each worth $5,000 less. *Example three:* Anxious to protect semi-rural land from intense development, a city rezones land, which had been developable in one-half acre lots, to allow only one-acre development. A, who owned ten acres, now can build but ten homes, rather than twenty. His land value drops from $100,000 to $75,000. Other landowners nearby retain the one-half acre classification and, due to the decrease in the amount of land that can be developed at that size, their land increases in value.

Prevailing constitutional law does not entitle the property owners who lose in these examples to compensation unless they can show that the effect of the new regulation leaves them with no economically viable use of their land.[6] A substantial diminution in value, though a factor, is normally insufficient to establish a taking under the Fifth Amendment.[7] Zoning schemes, thus, are not obligated to compensate and most do not do so.[8] Likewise, under most zoning schemes those who gain from municipal zoning action are not obligated to account for the gain.

The present non-recognition of zoning gains and losses may not, however, be the best way of doing things. It is arguable that, while local government should be able to act to protect the public interest, a lucky few should not gain when they have expended no effort, and that an unfortunate few should not lose when they have not, by their own actions, caused any harm. Furthermore, the wisdom of planning decisions is not always a given. Many actions are perceived as arbitrary and city zoning decisions seen as inconsistent. A system recognizing economic gains and losses, causing cities to look more closely at the impact of their decisions on landowners, might result in better decision making.

A substantial diminution in value, though a factor, is normally insufficient to establish a taking under the Fifth Amendment.[7]

There have been calls for zoning with compensation from the very early

[1]For a thorough treatment of the issue, see D. Hagman and D. Misczynski, *Windfalls for Wipeouts: Land Value Capture and Compensation* (1978).

[2]House Bill 1283, General Assembly of North Carolina, 1987 Session (sponsored by Representatives Miller and Mothershead). The bill was referred to the House Committee on Judiciary III where it awaits action.

[3]The term windfall is used here to mean any gain in the value of real property other than one caused by the owner or by inflation. Wipeout means any decrease in value (total destruction of value is not necessary) other than one caused by the owner or by deflation. See D. Hagman and J. Juergensmeyer, *Urban Planning and Land Development Control Law* 326-329 (1986).

[4]Jurisdictions differ in their use of the terms downzoning and upzoning. Generally, downzoning refers to a rezoning that diminishes value (e.g. commercially zoned land rezoned to permit only residential use). An upzoning normally increases value (e.g. residentially zoned land rezoned to permit commercial or industrial use). While this is normally accepted usage and the one employed in the North Carolina bill, some courts reverse the terms and label as upzonings actions that rezone property to residential use on the theory that such a use is a higher use in the classification hierarchy that puts residential use at the top. See generally 6 Rohan, *Zoning and Land Use Controls* § 40.01[3], n.51-52 (1986).

[5]The gains and losses will not necessarily be equal. Gains may exceed or fall short of losses.

[6]Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

[7]*Id.*

[8]See Kinney v. Sutton, 230 NC 404, 411-12, 53 S.E.2d 306, 311 (1949) ("A resultant pecuniary loss to a property owner is a misfortune which he must suffer as a member of society.")

[9]1923 NC Sess. Laws (Private Laws, Ch. 254),

days of zoning. In the 1920's, Winston-Salem had a scheme of zoning by condemnation and assessment. Pursuant to a state enabling act, the city was authorized, upon petition by a majority of property owners in the area affected, to establish restricted residential districts.[9] Appraisers were to be appointed to assess both damages and benefits to the land. The city was to pay damages to those whose property was adversely affected, and the city was to charge those whose property was enhanced in value.[10] The assessments became a lien on the benefited property until paid. Over the years, a number of other schemes have been attempted around the country. The British, and other Commonwealth countries, have used such techniques even more extensively.[11]

The bill before the North Carolina legislature is a response of sorts to some of these problems, but it is both underinclusive and overinclusive.[12] First, it requires compensation for down zonings, but it does not recapture windfalls. Second, it reaches beyond the compensation issue to destroy the presumption of validity normally accorded to legislative judgments and places the burden of proving the validity of zoning enactments on the municipality. As it now stands, the bill would gut zoning and deprive local government of the ability to control land use.

The bill's first proposition is that any diminution in value that occurs as a result of a downzoning is a compensable taking. While the statute does not define the relationship between the land owner who has been downzoned and the compensating authority, a governmental authority that "takes" land acquires a property interest in it. This property interest would be in the nature of a negative easement to prohibit development on the tract inconsistent with the land as downzoned. What occurs, in other words, is a compulsory purchase of development rights. In the future, if the property subjected to such a taking were upzoned, the landowner would not be able to develop the land under the new zoning classification because he would not own the development rights. The municipality, though, could sell these rights back to the landowner at whatever price the market would bear. Thus, a municipal land bank of development rights is created by the compulsory purchases.

The bill's second subsection starts off by saying that the first subsection "shall not operate to bar" zoning changes required in the exercise of the police power for health, welfare, morals, and safety of the citizenry. This is difficult to understand because the first subsection does not bar zoning changes; it simply requires that when zoning changes occur, compensation be paid. With that ambiguity in mind, the bill goes on to say that zoning changes for the health, welfare, morals, and safety shall be strictly construed, and it places the burden of proof on the zoning authority. The bill also says that the "phrase" (meaning either the "police power" or the "public health, welfare, morals and safety") shall not include certain matters, like aesthetics and community status quo. These are labelled "non-police power uses."

The bill before the North Carolina legislature is a response of sorts to some of these problems, but it is both underinclusive and overinclusive.[12]

The effect of the bill is to redefine and limit the police power so that certain exercises of state power can only be accomplished through the power of eminent domain. Thus, actions to promote aesthetics, community status quo, established life style, traffic control, or the enhancement of the economic status of some at the expense of those downzoned, are not within the police power. When regulations attempting to achieve those objectives are passed, compensation must be paid.[13]

Zoning regulations that do not fall within those purposes would not have to be accompanied by the payment of just compensation but would be strictly construed and the burden of proving validity would be on the city. This provision would work a change in the existing system that is as equally dramatic as the compensation provision of subsection (a).

Under existing law, a presumption of validity attaches to a zoning ordinance. A court will only overturn a legislative enactment if it is shown to be arbitrary, unreasonable, or discriminatory, and the burden of establishing invalidity is on the challenger.[14] If the question is fairly debatable, a court will not displace the legislative judgment with its own.[15] HB 1283 would deprive the municipality of the presumption, compel the municipality to prove validity, and require courts to strictly construe municipal actions. The question to be asked is whether the zoning authorities, hiding behind the presumption, have so abused their powers that

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reprinted in The General Ordinances and the Charter and Amendments to the Charter of the City of Winston-Salem, North Carolina 71-82 (1926).

[10] *Id.* at 74 3(5)).

[11] For a brief discussion of these efforts see Hagman and Juergensmeyer, *supra* note 3 at 333. Kansas City, Missouri and Minneapolis have also used similar schemes. See *id.* at 347-357 and Kansas City v. Kindle, 446 S.W.2d 807 (Mo. 1969).

[12] House Bill 1283 provides, in part, that the following be added to Chapter 160A of the General Statutes:

(a) There is hereby adopted, as a matter of public policy, the concept that the practice of 'down-zoning', being the zoning, rezoning, or change of zoning from a less restrictive zoning classification to a more restrictive zoning classification, when that zoning, rezoning, or change makes such property economically less valuable, shall be a 'compensable taking', for which the governmental entity, city or county, shall compensate the owner for loss of value. The action for compensation shall, pursuant to this section, be in the nature of, and governed by, the same legal procedures applicable to an inverse condemnation action.

(b) Subsection (a), above, shall not operate to bar zoning or zoning changes required in the exercise of police power of the State for the public health, welfare, morals, and safety of the citizenry, but in such cases, the phrase 'public health, welfare, morals, and safety' shall be strictly construed and the evidentiary burden of proof shall be upon the zoning entity. The phrase shall not include matters of aesthetics, community status quo, or established lifestyle, traffic control, or enhancement of the economic status of others at the expense of the owners of the property downzoned, or other nonpolice power uses, all of

such a dramatic reversal of existing practice is justified. In specific instances, some states have made that decision.[16] It may be, for example, that municipal zoning of off-site manufactured housing (mobile homes) has been so restrictive that it has deprived people of viable, low cost housing options. If such abuses are shown to exist, the legislature might decide to require municipalities to zone sufficient areas for mobile homes to meet demand or to

A court will only overturn a legislative enactment if it is shown to be arbitrary, unreasonable, or discriminatory, and the burden of establishing invalidity is on the challenger.[14]

explain why they cannot do so. However, even if some adjustments to the burden of proof may be necessary, that does not mean that the abolition of the presumption in all cases, as done by HB 1283, is warranted.

One difficulty with the bill's police power versus eminent domain power distinction is that it is not at all clear what kind of zoning regulation can take place that does not fall within the bill's phrase of "aesthetics, community status quo, etc." Almost all zoning is based on protecting to some degree aesthetics, the status quo, or the other listed items, and the bill does not say whether the non-police power purposes must be the sole, motivating factor or simply a motivating factor. Under the bill, questions abound. For example, an exclusive, retail commercial zone, designed to provide a desirable business climate, might be regarded as an enactment for "the enhancement of the

Zoning will cease, or creep along, because it will be either a futile effort or a costly one.

economic status of others" (prospective commercial users and their customers) done "at the expense of the property owner downzoned." The basic practice of separating commercial uses from residential uses may be outside the police power if done to relieve traffic congestion. Likewise, setback regulations for buildings may be motivated by both traffic safety concerns and aesthetic considerations. It is, in fact, difficult to conceive of zoning enactments that could be pursued without compensation being demanded. Perhaps a limitation on development in a flood plain might not fall within the non-police power objectives. If such a control could avoid an open space, aesthetic label, it would not require compensation, but it would only be valid if the city could sustain the new, heavy burden of proof.

The effect of both propositions (compensation and strict burden) would be to substantially reduce, if not

Adjustments to zoning schemes will be necessary to respond to new problems and to react to old problems only recently perceived.

eliminate, land use regulation. The compensation provision does so because it imposes a direct-dollar cost without providing the city with a method to recapture windfalls. If recapture were allowed, then at least the city could finance its compensatory takings. The burden provision does so because experience dictates that the heavy burden of proof will rarely be able to be met. Even if regulations are upheld under the new burden of proof, the cost of proving validity may be high. Zoning will cease, or creep along, because it will be either a futile effort or a costly one. The fear of having to pay compensation and the confusion that would exist over theoretically permissible, but strictly construed, zoning and other kinds of zoning would grind the process to a halt.

Care must be taken not to unduly hamper local ability to protect the public interest. Adjustments to zoning schemes will be necessary to respond to new problems and to react to old problems only recently perceived. Housing needs may dictate an increase in land zoned for multi-family use. An historical area may need zoning protection. Environmentally sensitive wetlands may dictate a decrease in the intensity of development allowed. Excessive and rapid growth may so burden municipal facilities or alter community character that some efforts to slow growth may need to be taken. Depriving the legislative body of the presumption of validity may mean that such changes cannot be made. If, however, changes are made, and if, in the process of making changes, the positive and negative effects on land value can be assessed in monetary terms, then perhaps those who gain should pay and those who suffer should be paid. While some may doubt the workability of a system, it may be worthwhile for the legislature to study the matter.

* *Professor of Law*
Wake Forest University

which shall be compensable takings' as in (a), above.

The bill applies to counties as well as cities. For convenience of discussion in this article, I will refer simply to municipal or city action.

HB 1283 also contains a provision that requires the posting of a bond where a zoning change is sought by someone who does not own the property affected. Presumably, it is aimed at deterring neighborhood or other groups from seeking rezonings.

[13]Regardless of the wisdom of this, it should be noted that in some instances the enactment of such controls will increase the value of property. Take, for example the Oakwood District in Raleigh where ordinances regulate architectural changes for historic and aesthetic reasons. Property values there stabilized and rose after the adoption of controls. See A-S-P Associates v. City of Raleigh, 298 NC 207, 258 S.E.2d 444 (1979) (ordinance upheld against statutory and constitutional attacks). See Raleigh News and Observer, p. 1-F, May 5, 1985, for discussion of property values in the area.

The bill, however, makes it look as if it excludes such activity from the zoning power. Such measures fall under the power of eminent domain, but there may be no one whose property is taken.

[14]See generally 5 Rohan, *Zoning and Land Use Controls*, § 36.02[2] (1987).

[15]Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926); In re Parker. 214 NC 51, 55, 197 S.E. 706, 709 (1938).

[16]In Pennsylvania, for example, the presumption of validity does not attach to an ordinance that totally bans legitimate land uses from its territory. The rationale of the judicial revocation of the presumption is that separating land uses by zoning is the essence of zoning, but totally excluding some uses is not. The latter occurrence is sufficiently suspect that a city attempting to do that ought to justify its action. *See* Beaver Gasoline Co. v. Osborne Borough, 445 Pa. 571, 285 A.2d 501 (1971).

Alumni in the Corporate World

Editors Note: In keeping with this issue's theme of business and law, interviews were arranged by telephone with several alumni who have gained prominent positions in their respective businesses.

David Wesley Greenfield

David Greenfield ('75) is Assistant General Counsel with Rockwell International. Rockwell is a conglomerate involved in research, development, manufactuing and marketing of a wide range of products through its aerospace, electronics, automotive and general industries divisions. Worldwide, its sales totaled $12 billion in 1986, and it has about 120,000 employees.

Litigation plays only a small part in David Greenfield's job. Rockwell generally obtains outside counsel familiar with local rules of court. An important aspect of Greenfield's responsibilities is giving advice to the company's officers and keeping them abreast of federal regulations which impact their operations. Additionally, he is involved in putting together mergers, acquisitions and joint ventures for the corporation. About 40 percent of his work is in the international arena, mandating a lot of travel. Business took him to Europe eight times last year and also to Japan. His office is in Rockwell's corporate headquarters in Pittsburgh, his hometown, and also where he graduated from college (University of Pittsburgh). However, he frequently travels to the company's western headquarters in Los Angeles.

Following graduation from Wake Forest, Greenfield was a member of the law department of Westinghouse Electric. He has been with Rockwell for six years and continues to enjoy his job. The varied opportunities and assignments in the corporate sector appeal to him. Greenfield said the key to his effectiveness is to establish a close familiarity with the company, its people, and its problems.

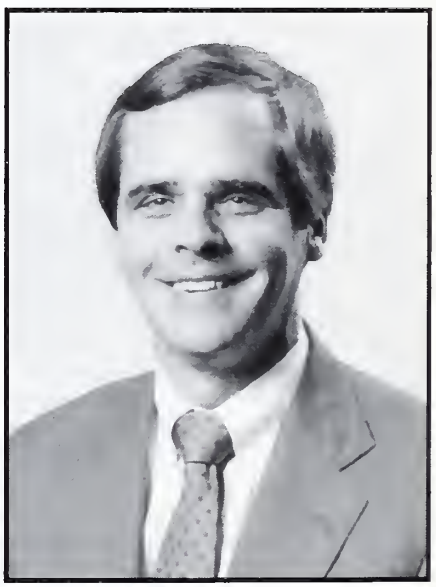
Greenfield feels Wake Forest has a very solid academic program that provides a fundamental understanding of basic legal principles. He was glad to learn that the Clinical Program has extended its student training into the corporate area. Greenfield sees expanding opportunities and mobility in the corporate sector for those wishing to enter it. Companies of all sizes are building their legal departments to do much of the work they have been contracting out to private firms. He especially recognizes a growing awareness of a need for people with experience in the international area. To get a foot in the corporate door, he emphasizes establishing a solid academic record and concentrating on basic courses (such as corporations, anti-trust, tax and ERISA) needed in preparation for the corporate setting.

Greenfield is married to the former Carla Howell ('75) from Charlotte. She received her JD from the University of Pittsburgh in 1979 and is in private practice, concentrating in municipal finance. They reside in Mt. Lebanon, PA,with their children, Michael 3 and Allison 1.

—Jim Hill

David Greenfield ('75) and family.

Robert Nelson Renkes



Bob Renkes ('77 and a former Jurist staffer) is Executive Vice President of the Petroleum Equipment Institute. Founded in 1951 and headquartered in Tulsa, OK, PEI is an international trade association with over 1,170 corporate members throughout the United States and in thirty-five foreign countries. These companies are leading

manufacturers, sellers and installers of equipment used in service stations, terminals, bulk plants, fuel oil and gasoline delivery, and similar marketing operations for handling petroleum and industrial liquids. PEI provides its members with services and information designed to improve their management ability and efficiency and further profitable operation of their businesses, commensurate with the best interests of the public.

PEI's members elect a board of directors which, in turn, appointed Bob to serve as executive director and general counsel. An important aspect of his duties is keeping members informed about federal regulations (especially those promulgated by the EPA) and other developments that impact on industry standards. This involves monitoring over 140 periodicals and attending legislative hearings in Washington, DC. Along with other publications, he and his staff publish a newsletter "TulsaLetter" several times each year to about 5,000 readers. Additionally, they publish a monthly newsletter concerned solely with promoting safety in the industry. Renkes holds trade shows at conventions in and out of the United States. He also assists members individually both by answering legal questions and referring them when necessary to attorneys for litigation.

Renkes finds both his job and the corporate environment in general very satisfying. The idea of using his law degree in business always appealed to him more than a conventional legal practice. Following graduation from Wake Forest, he became administrative director of Collegiate Products, Inc., also based in Tulsa. This company rented 45,000 compact refrigerators to students on 176 college campuses across the United States. Renkes spent a lot of time traveling, giving seminars and negotiating contracts with campus representatives. He joined PEI on January 1, 1979.

Wake Forest prepared Renkes well, he said, in how to think through the most important functions he performs daily: problem identification, problem solving and communication. Proficiency in legal writing is a skill he stresses heavily. He says that Wake Forest also enjoys a good reputation in the Tulsa area, one which has been enhanced by an improved placement program. Work on a book that he contributed while in school *(Trends In Non-Profit Organizations Law),* later published by Professor Howard Oleck, specifically helped Renkes land his job with PEI. He advises that the business world is an attractive alternative to anyone not inclined to go the traditional private or corporate legal practice routes. It is a setting where hard work can pay off very quickly; people are treated fairly and appreciated for what they do; a law degree can mean unlimited opportunity. He feels that the expanding number of trade associations in this country presents excellent career opportunities for law graduates and recommends the American Society of Association Executives in Washington, DC as a good starting point to discover jobs in this field.

Renkes and his wife, Dianne, reside in Tulsa, with their two-month old son, John Douglas.

—Jim Hill

Jim Hill is a third-year student from Ashe, NC.

Ronald Dean Payne

Ronald Dean Payne ('72) is Vice-President of Engineering Systems & Development Corp. of San Jose, CA, a firm specializing in the development and production of floppy disks and micro-diskettes for computers.

To get where he is today, Mr. Payne has traveled extensively as a result of his association with the Air Force ROTC program which began when he was an undergraduate at Carolina and continued after his graduation from Law School at Wake Forest. He was placed on active duty at Homestead AFB in Florida for eighteen months, during which time he earned a LLM in taxation at the University of Miami. In June 1974 he traveled to Korea for a year with the Air Force and upon returning he earned another master's degree, this one in government procurement law from George Washington University. In July 1976, Mr. Payne was assigned to Wright-Patterson AFB in Dayton, OH, where he performed government contract legal work as a member of the Air Force JAG corps. His duties included dealing with contracts exceeding $25 million concerning the B-1 bomber and the F-16 fighter plane.

Upon leaving the Air Force, Mr. Payne took employment as counsel for the FMC Corp., a defense corporation based in San Jose, CA. He worked extensively with contracts of $400-$500 million concerning the Bradley Fighting Vehicle, a controversial government project. This job lasted from March of 1979 to November 1981 at which time FMC Corp. divested a division which developed into the present corporation, Engineering Systems & Development (ESD).

Mr. Payne estimates that 90 percent of his time is still spent dealing with legal matters, such as the process of ESD going public. The process of registration with the Security Exchange Commission and disclosure took about a year to complete. The corporation is now 40 percent public and listed on the American York Stock Exchange.

A smaller corporation like ESD offers a variety of legal matters, while a larger corporation would tend to have in-house counsel specializing in more areas which limits the areas of individual participation. Mr. Payne said that in-house counsel provides support and supervision over cases before giving them to out-house counsel to litigate in court.

When asked how law school prepared him for his present position, Mr. Payne responded that Wake Forest did a "very good job" in giving him exposure to concepts and knowledge of the law, especially in those areas related to his undergraduate degree in accounting from Carolina. His favorite courses at Wake Forest included taxation and other business-related areas.

On the subject of corporate law, Mr. Payne said that most corporations prefer to hire those lawyers with two to five years experience. Starting salaries in a corporation in California were in the $30,000 plus range, whereas starting salaries in a top California firm range from $50-60,000. Mr. Payne warned that these figures are offset by the high cost of living in the state.

—Dean Hollandsworth

Thomas Michael Doerk

Thomas Michael Doerk ('76) was surprised upon being contacted by *The Jurist* for this business-oriented issue. He said that he thought of himself as a "black sheep" of the law school, having left the legal field to concentrate on the business world. He is Vice-President of the First Interstate Bank of Denver and prefers the career of a businessman to that of an attorney. In his words the businessman is more involved in the "dynamics" of commerce and makes the decisions, while the corporate attorney is relegated to an advisory position in most instances.

Doerk said law school prepared him for his present position by exposing him to legal principles that are used in management of problem loans, foreclosures and other backruptcy issues involving business and banking principles. However, he enjoyed his courses on Constitutional Law, Jurisprudence, and Criminal Law most of all.

Doerk's first job after graduating from Wake Forest was practicing law in Minnesota for two years. In 1979 he went to New York to train for a career in banking with the Chemical Bank where he was employed for two years. He then returned to Minnesota to work for North West Bank of Minneapolis and put his legal education to use in oil and gas mortgages.

In March of 1984 Doerk took a job in Denver where he started working with oil and gas interests and later switched to real estate. The bank was bought by the First Interstate Bank Corp., the nation's sixth largest bank holding corporation, and is now a successful $2 billion bank, with an eight person in-house counsel.

Most of Doerk's duties as vice-president are administrative and business-oriented. However, when asked about what he thought of the JD/MBA program, Mr. Doerk's response was negative. He said the program would be "too vocational" as opposed to the discipline of law school and its theoretical approach to education. Most of what needs to be learned about business can be taught on the job according to Doerk, while school should be a place where concentration must be on theories and concepts.

—Dean Hollandsworth

Dean Hollandsworth is a second-year student from Greensboro, NC.

Peter James Hunter

Peter James Hunter, Jr. ('66) is Assistant Vice-President for Norfork Southern Corporation in Roanoke, VA.

Hunter began working in Norfolk Southern's law department in 1969. At that time the railroads were heavily regulated by the Interstate Commerce Commission and Hunter handled many Norfork Southern cases.

Today, the emphasis has shifted from the Interstate Commerce Commission to private transportation contracts between railroads and their customers. With deregulation, the work shifted from litigation to private contracts. As a result, in 1981, Hunter left Norfork Southern's law department, and moved to their marketing department where contracts are written.

After graduating from Wake Forest School of Law, Hunter obtained his Masters of Law from Harvard University and then served two years in the US Army.

"I'm very pleased with the education I received at Wake Forest. I feel I was very fortunate to be able to attend Wake Forest," Hunter noted. "My knowledge of contracts today has been helped by the course in Contract Law I took under Professor Divine."

Although Hunter has never practiced law privately, he points out one big difference between working for a corporation and working for a firm, "The amount of money involved in cases you litigate or contracts you negotiate is extremely large. Most of the claims we handle involve millions of dollars."

—Donna M. Colberg

Robert Charles Rogers

Robert Charles Rogers, ('57) is Vice-President of Central Fidelity Bank in Richmond, VA. where he has been working for the past 20 years.

Rogers has worked for corporations since his graduation from Wake Forest. His first job was for two years with Union Carbide Corporation's labor department in New York. He then moved to North Carolina, and was in the trust department of Planter's National Bank in Rocky Mount for 10 years before moving to Richmond.

"My job is law related, but not the type of law that is traditionally thought of,"Rogers says. He is currently the Manager of the Personal Trust Operation of the bank and handles such things as trusts, taxes, personal trust administrators, and personal trust for new business people.

"In the area of trust administration you run head on with legal questions almost every step of the way," Rogers states. "We are involved with almost anything a person on the outside would be involved in."

Rogers asserts that "unquestionably the values that faculty and students held at Wake Forest have been a part of any success I've enjoyed."

—Donna M. Colberg

Donna Colberg is a first-year student from West Virginia.

Alumnus Interview: Judge William Z. Wood

Judge William Z. Wood's legal career began after World War II when he matriculated at Wake Forest on "the

Judge William Z. Wood

GI Bill of Rights." Upon the suggestion of one of his uncles, he studied law, graduating from Wake Forest College and Law School in 1950. The selection of a college and law school was no problem for Judge Wood; Wake Forest was his first and only choice. He based this decision on Wake Forest's reputation for producing excellent attorneys. When asked about whether Wake Forest lived up to its reputation, he smiled and said, "They sure did a good job with me. I don't know of any place that could have prepared me better." In 1971, Judge Wood rose to the bench, becoming a Resident Judge of the Superior Court in the 21st Judicial District. In 1981 he became the Senior Resident Superior Court Judge.

When asked about the developments in the law since his appointment to the bench, Judge Wood had several comments. He believes one problem today is the attorney's lax attitude toward the bench. Part of this comes from the large case loads in the District Court. The judges have enough work trying to keep the defendants in line, so discipline of attorneys may suffer. Judge Wood advocates hard work as a punishment available for certain crimes. This is to prepare convicts for their return to society. They will have good work habits and stand a better chance of keeping a job on the outside. He believes most changes in the legal system are for the better. One of the great advances is the effort to bring the courts recording system into the age of computers and microfilm. Forsyth County is the site of a pilot program to put court records on microfilm. The county plans to use computer technology to the fullest extent possible.

Judge Wood is pleased about the growth of victims assistance and support programs. In Forsyth County this represents a coordinated effort of the sheriff's department, local businesses, community organizations, and churches. This includes space in the courthouse for victims so that they may be kept separate from other witnesses.

Other new aspects of today's legal system cited by Judge Wood include the liaison between the courts and the law enforcement agencies, and the District Attorney's Office. One of the results of this is the technical arrest that law enforcement officers use in Forsyth County. The program provides "continuing legal education" for officers who are interested in learning more than the minimum required. The final advance in the law is the use of criminal pattern jury instructions. Once a month, on Friday and Saturday, Judge Wood meets with other judges in Chapel Hill to write, modify or just discuss pattern jury instructions. For both judges and attorneys these instructions provide a clear, concise statement of the law.

Beyond his legal activities, Judge Wood has been active in the community in the Presbyterian church, and the Democratic Party. Other community activities inelude the March of Dimes and various other civic and charitable organizations.

By Eric Nyce ('87).

Class Notes

1946

Forrest H. Shuford, II has retired after 33 years with the NC Industrial Commission. He served as Commissioner and Chief Deputy Commissioner. He is now Of Counsel with Haywood, Denny, Miller, Johnson, Sessom & Patrick, of Durham.

1957

James E. Tribble was recently inducted as a fellow of the American College of Trial Lawyers. He is the partner in charge of appellate litigation for the Miami firm of Blackwell, Walker, Fascell & Hoehl.

1961

Emil F. (Jim) Kratt has been elevated to the office of Vice-President of the North Carolina State Bar. In the past he has served as Chairman of the Competency of New Admittees Committee, the Lawyers Trust Accounts Committee, and the Discipline Review Committee. Mr. Kratt is a partner in the firm of Waggoner, Hamrick, Hasty, Monteith, Kratt, Cobb & McDonnell in Charlotte.

1963

Fred Gilbert Morrison, Jr., Administrative Law Judge, completed the Administrative Law: Fair Hearing course this past summer at the National Judicial College at the University of Nevada.

The course had 70 participants representing 23 states. Judge Morrison is in the North Carolina Office of Administrative Hearings in Raleigh and is active on the Administrative Law Committee of the North Carolina Bar Association.

1964

William King has been elected President of the North Carolina Academy of Trial Lawyers. He specializes in personal injury, wrongful death, land condemnation, and family law with the Durham firm of King, Lambe & Crabtree.

1966

Lawrence S. Groff is a partner in the newly formed firm of Oster & Groff in

Lincoln, RI. He will specialize in Real Estate and Taxation and continue to participate on the Special Resources Committee of the Rhode Island Bar Association. Along with his wife, Joanne, and three children (Ben 13, Jon 10, Caroline 6) he visited the law school in August 1987 and talked with Professors Divine and Sizemore.

1968

Wayne H. Foushee is now in general practice with an emphasis on corporate law and litigation with the firm of Booe, Goodson, Shugart, Merritt & Foushee. From 1968-1986 he served as Assistant General Counsel for McLean Trucking Company. He also announces the birth of his first child, Matthew Hampton Foushee, on August 5, 1986.

1973

Kenneth M. Millman was appointed to the bench of the Family Court of the State of Delaware for a twelve-year term which commenced October 31, 1986.

John L. Pinnix, a partner in the Raleigh firm of Barringer, Allen, & Pinnix, has recently been elected Chapter Chair of the Carolinas Chapter of the American Immigration Lawyers Association. This is the first time the chapter has elected a member to serve a second full term as chair.

1974

Charles R. Brewer, formerly US Attorney for the Western District of North Carolina, announces that he is now engaged in the general practice of law at 530 Merrimon Ave., Asheville.

1975

Charles L. Cromer is serving a second term in the NC House of Representatives for Davidson, Davie, and part of Iredell counties. In August he delivered the commencement address at Sandhills Community College.

M. Douglas Goines has entered a general, civil practice in the offices of Nelson W. Taylor III, in Morehead City. Previously, he served as legal counsel for Conner Corporation and its subsidiaries.

1976

Linda B. Bridgman has become associated with the firm of Weil, Gotshal & Manges. She will be in their Washington, DC office.

1978

Robert L. McClellan has joined the firm of Ivey, Ivey & Donahue in Greensboro as an associate. He will be specializing in criminal and civil litigation and domestic relations.

Robert H. Friend joined the Melton-Folger Companies as Executive Vice-President of Financial Planning in August 1987. His new business address is Melton-Folger Companies, 101 S. Elm St., Suite T2-20, Greensboro, NC 27401.

Steven P. Pixley has been appointed as Assistant Attorney General of the Federated States of Micronesia (in the South Pacific). His employment with the FSM began in October 1987.

1980

Carol Lumb Allen has been named to the Hood College Board of Trustees. Mrs. Allen is a graduate of Hood College, located in Frederick, MD, and currently practices corporate law with the firm of Womble, Carlyle, Sandridge & Rice in Charlotte.

Melinda W. Melhorn has joined the law firm of Battle, Winslow, Scott & Wiley, PA, of Rocky Mount. She previously served as an Assistant District Attorney in the Seventh Judicial District for five years.

Karen Britt Peeler and her husband Michael Peeler (Babcock MBA '84) announce the birth of their first child. Reeves was born October 27, 1986, weighed 9 lbs 6 oz, and was 21 1/2 inches long.

1981

Charles (Chuck) Morgan and his wife Susan announce the birth of their daughter Courtney Allise on October 1, 1987. She weighed 8 lbs and measured 20 1/2 inches.

1982

Charlie Dobbin is now Executive Vice-President of Caldwell Savings Bank in Lenoir. He formerly worked with First Citizens Trust office in Charlotte.

1983

Sarah Wesley Fox and **Craig Bradford Wheaton** ('81) announce the birth of their son, Bradford Fox Wheaton, on June 29, 1987. He weighed 9 lbs 13 oz.

1984

Sarah Katherine (Kathy) Kelly has joined the firm of Craige, Brawley, Liipfert & Ross of Winston-Salem as an associate. She is also serving her second year as Chairman of the Young Lawyers' Division Child Advocacy Committee.

1985

Gregory R. Noonan has enrolled in the LLM program for tax at Villanova.

1986

Robert H. Griffin is now with the firm of Spears, Barnes, Baker, Hoof & Wainio in Durham.

1987

Gregg E. McDougal has been named an associate in the Augusta, GA, office of Knox & Zacks. He will be handling litigation and general business matters.

Stacey D. Cowley is an associate in the firm of Ellin & Baker in Baltimore, MD.

John R. Fonda is now with the firm of Bailey & Thomas of Winston-Salem.

Kenny B. Rotenstreich is an associate with Henson, Henson, Bayliss & Coates in Greensboro and was recently married to the former Amanda Hammer.

E. William (Bill) Kratt is an associate with the firm of Wyrick, Robbins, Yates & Ponton in Raleigh, NC

Lori E. Privette and **William John (Bill) Wolf** have become associates with the firm of Womble, Carlyle, Sandridge & Rice.

Barbara E. Brady, Peter Lane, Leon H. Lee, Jr., and **Kimberlee Scott** are now with the firm of Petree, Stockton & Robinson. Barbara and Leon are in the Winston-Salem office, and Peter and Kimberlee will practice in the firm's Charlotte office.

WHAT'S NEW

Wake Forest Jurist would like to hear from all alumni about any new developments in your life. Kindly take a few moments to fill out the form below and return it to *Wake Forest Jurist,* Wake Forest University School of Law, P.O. Box 7206, Winston-Salem, N.C. 27109.

Thank you for the tremendous response to our fall letter. We would appreciate your keeping us informed by using the form below, which will appear in each issue of the *Jurist.*

Name: _____ Year of Law School Graduation: _____

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Home Address: ☐ (check if new address) _____

Brief description of law practice or business: _____

_____

Public offices, professional, and civic honors with dates: _____

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Personal items of current interest: (i.e. marriage, birth of child) _____

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